University of Padova
Human Rights Centre

Italian Yearbook of Human Rights

2021

PADOVA UNIVERSITY PRESS

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Università degli Studi di Padova
via 8 Febbraio 2, Padova
www.padovauniversitypress.it

First edition: July 2022

Design and editing: Centro di Ateneo per i Diritti Umani «Antonio Papisca», Università di Padova

Layout: Oltrepagina Srl

ISBN: 978-88-6938-307-6

Printed by Padova University Press in July 2022

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List of Acronyms

C.I.: Constitutional Law (legge costituzionale)

CAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CDFUE: Charter of Fundamental Rights of the European Union

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

CIDU: Inter-Ministerial Committee for Human Rights *(Comitato interministeriale dei diritti umani)*

CJEU: Court of Justice of the European Union

CM: Committee of Ministers of the Council of Europe

CoE: Council of Europe

CPED: International Convention for the Protection of All Persons from Enforced Disappearance

CPR: Repatriation Centre *(Centro di permanenza per i rimpatri)*

CPT: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CRC: Convention on the Rights of the Child

CRPD: Convention on the Rights of Persons with Disabilities

D.p.c.m.: Decree of the President of the Council of Ministers (decreto del Presidente del Congilio dei Ministri)

DPO: Department for Equal Opportunities of the Presidency of the Council of Ministers

D.p.r.: Decree of the President of the Republic (decreto del Presidente della Repubblica)

ECHR: European Convention for the Protection of Human Rights and Fundamental Freedoms

ECOSOC: United Nations Economic and Social Council

ECRI: European Commission against Racism and Intolerance

ECtHR: European Court of Human Rights

ESC-R: European Social Charter (revised)

FAO: Food and Agriculture Organisation of the United Nations

FRA: Fundamental Rights Agency of the European Union

FRONTEX: European Border and Coast Guard Agency

GRECO: Group of States against Corruption (Council of Europe)

GRETA: Group of Experts on Action against Trafficking in Human Beings (Council of Europe)

ICC: International Criminal Court

ICCPR: International Covenant on Civil and Political Rights

ICERD: International Convention on the Elimination of all forms of Racial Discrimination

ICESCR: International Covenant on Economic, Social and Cultural Rights

ICRMW: International Convention on the Protection of the Rights of all Migrant Workers and their Families

ILO: International Labour Organisation

IOM: International Organisation for Migration

L.: Law

L.d.: Law Decree (decreto-legge)

Lgs.D.: Legislative Decree (decreto legislativo)

NATO: North Atlantic Treaty Organisation

ODIHR: Office for Democratic Institutions and Human Rights (OSCE)

OHCHR: Office of the High Commissioner of the United Nations for Human Rights

OPCAT: Optional Protocol to the Convention against Torture

OSCE: Organisation for Security and Cooperation in Europe

P.l.: Provincial Law

PACE: Parliamentary Assembly of the Council of Europe

R.l.: Regional Law

TAR: Administrative Regional Court (Tribunale Amministrativo Regionale)

TFUE: Treaty on the Functioning of the European Union

TUE: Treaty on European Union

UNAR: Office for the Promotion of Equal Treatment and the Fight against Racial Discrimination (*Ufficio per la promozione della parità di trattamento e la rimozione delle discriminazioni fondate sulla razza e sull'origine etnica*)

UNDP: United Nations Development Programme

UNEP: United Nations Environmental Programme

UNESCO: United Nations Educational, Scientific and Cultural Organisation

UNGA: United Nations General Assembly

UNHCR: United Nations High Commission for Refugees

UNICEF: United Nations Children's Fund

UPR: Unitersal Periodic Review

WHO: World Health Organisation

Italy and Human Rights in 2021: Rights during the Crisis, a Crisis of Rights

It is not a straightforward task to describe 2020 in Italy (and in the rest of the world) from a human rights perspective. The year was marred almost from the beginning by the global SARS-COV-19 pandemic, and the direct and indirect implications have left a mark on all parts of our social and individual lives, both for Italians and others across the globe. Many months after the initial break-out, in 2021 we are still a long way from seeing an end to this pandemic. It is challenging to develop an overall view that allows us to embrace the various facades of this pandemic in one, shared (or at least coherent) narrative.

The COVID-19 pandemic is, of course, not the first pandemic to hit vast areas of the world. However, it is the first that its development and progression was followed and monitored every step of the way, by scientists and other observers around the world. This hour-by-hour monitoring generated violent waves of reactions, sometimes justified and sometimes incongruous, naturally leading governments, society and individuals to make different (and at times fundamentally opposing) decisions: most were constructive and in the spirit of solidarity, some proved more opportunistic, counter-productive or pushed forward by "negationist" ideologies, while others were purely conflicting. Above all, these dynamics developed on all sides of the discussion, from the international community to individual choices, raising complex legal, political, ethical and moral questions.

The spread of the virus and the decisions made to contain it had repercussions on all aspects of fundamental rights. During a pandemic, the right to health and the right to life are above all under threat.

Every measure that institutions and Governments took touched directly on the fabric and normality of people's everyday lives. This year, we have seen the range and effects of the "power" that political, economic-financial, technological-industrial, scientific and religious organisations are able to wield on people's and individuals' lives. Individuals, families and communities were called upon to entrust their everyday existence and their futures to one or more of these "biopowers" (or an unprecedented combination of them), submitting to or rebelling against often radical lockdown measures. Throughout 2020, millions of individuals adapted to the rules and regulations which weighed heavily on their private and family lives, reducing their personal freedoms, the right to work, school and culture, and brushing on people's freedom of information and even freedom of conscience.

In some cases, the pandemic occurred at a point in history where the various and legitimate needs and demands that regulate our existence (even in ordinary times) had generally been balanced. Following laws and governmental decrees tallied with our existing (often non-specialistic) scientific knowledge, it did not go against people's ideological or religious beliefs, and when implementing restrictions, the authorities were able to find a balance between the work and social needs of most citizens. In other cases, for certain individuals, that balance was not struck. The political choices made during the emergency disregarded or manipulated scientific data, taking advantage (or attempting to take advantage) of the health emergency to push through objectives unrelated to the health or the national or global population. The scientific community developed research studies and failed to clearly communicate their results, or at least did so while showing insufficient social sensitivity. The adoption of anti-COVID measures produced significant conflicts of interest in the economic field, leading to an explosion of ideological battles. Whether knowingly or unknowingly, the digital world and in particular social media fuelled the spread of partial, biased and sometimes even fake information. This white noise of information may have both slowed the adoption of effective measures to contain and tackle the virus and exacerbated inequality and resentment, causing feelings of fear and isolation to grow across many parts of society.

The challenge posed by COVID undoubtedly put the values protected by international human rights standards (life, health, personal freedom, education, privacy, etc…) on the line, with no discrimination or difference in who was affected. However, the impression was that every country acted in almost complete isolation in their attempts to tackle the emergency. International coordination implies a readiness to exchange knowledge and best practices and to share resources to fight a common danger; however, in this case, there is not much evidence of this happening effectively.

The lack of a serious global response to manage the pandemic is represented by the huge gap (shown in 2021) between rich and poor countries regarding vaccine access. As of summer 2021, large parts of Africa and other States such as Syria, Afghanistan, Yemen or Papua New Guinea were still falling well below the World Health Organization target of vaccinating at least 10% of all inhabitants by September 2021. Another indication of the lack of a shared strategy is the difference in the levels of public funds that have been given or allocated to help families and businesses hit by the pandemic. In 2020, the support given through domestic taxation to individuals and people who had been seriously affected by the pandemic through national taxes was much higher in countries with developed economies than in developing or low-income countries. According to the International Monetary Fund Fiscal Monitor, Italy provided the greatest support to individuals and businesses affected by the pandemic at the expense of general taxation, with fiscal measures (direct contributions, tax relief, etc.) that, in financial terms, represented more than 35% of the country's GDP. The average in less developed countries was just higher than 2.5%. The pandemic crisis not only combined with the dramatic inequality between the Global South and the Global North, but also widening the gap between States of the same area and, within individ-

ual countries, between various parts of the population, deepening existing inequalities.

The pandemic affected individuals and families in various different ways. Every evaluation of the overall impact of this global event has been fragmented and incomplete. We can still see that the most effective responses under various parameters (healthcare, economic, social, and political) came from systems that provided sufficient resources (not only financial) for investment. Above all, these systems were equipped (or were not yet unravelled under the wave of neoliberalism) with a legal, institutional and social infrastructure based on the values of equality and solidarity. As every report on the subject highlights, States with integrated tools to recognise and protect social and economic rights are demonstrating themselves to be the most resilient against the effects of the pandemic and are able to better recover after the successive waves of the pandemic.

However, a pandemic cannot be effectively fought simply by actions at the local or even national level. Global measures are needed, just as those put in place to tackle climate change. The global network of human rights machinery should provide the tools to promote and coordinate actions that Governments and other "biopolitical" stakeholders can implement within their territories. Unfortunately, this ability for leadership and governance has so far been insufficient.

The sudden blockage of transport, above all international transit, and the need to delay or move meetings of international human rights bodies to remote online platforms negatively affected their ability to impact decisions made by Governments in a timely and effective manner. The Office of the High Commissioner for Human Rights of the United Nations published a comprehensive guide on human rights and COVID-19, and at least twelve other guides to inform and direct States in their fight to tackle the pandemic. The Special Rapporteurs of the Council for Human Rights have drawn up numerous declarations and recommendations, and other specific observations have been inserted by Treaty Bodies into the concluding documents sent to States. Human rights were the focus of the analyses and calls to action by the General Secretary of the United Nations and various Specialised Agencies – beginning with António Guterres' appeal for a "Global Ceasefire" during the emergency pandemic on 23 March 2020.

However, these efforts clashed with the reduction of the physical, social and "mental" spaces given over to normal political and diplomatic debate. During these months, we saw a brave reshaping of the ways and places for the dialogue among Governments and between civil society and Governments. However, results were inevitably uncertain and incomplete. It was impossible for world leaders to travel and to exchange views, leading to (among other things) a general regression towards favouring the national and local level both politically and economically, in the exact moment in which a real trans-national and "ecological" approach was required. If nothing else, the pandemic seems to have enhanced some regional authorities. This is the case of the European Union: the dynamics of regional integration were positively relaunched through the adoption of measures such as NextGenerationEU, which adds

to the new framework of the EU Budget 2021-27 – although the bill did not fail to stir up concerns and hostility of "sovereigntist" and "populist" Governments and political forces within the EU.

For civil society stakeholders, the lack of direct dialogue and the need to manage partnerships remotely has weakened their capacity to manage projects, influence policy and contribute to public debate. Even in the most open and democratic societies with positive examples of collaboration and solidarity, there was a general rise in suspicion towards institutions – political, health, scientific, etc. – and their policies in the public opinion. Conspiracy theories fomented on social media: a place of intrinsic susceptibility to act as an echo chamber for unfounded and biased information, and as an incubator for sectarian and hate groups. Social media platforms were shown to be pervious to targeted propaganda and disinformation, further spread by the emergency situation. Even in the most forward-thinking societies (as seen from outside), an unprecedented divide formed between an apparent majority which critically recognises and supports suggestions made by the scientific community, bearing in mind the joint challenge the world faces, and a conspicuous minority that seems unable to confront this unparalleled scenario.

Finally, the pandemic has not only exacerbated many human rights issues that continue to afflict Italy (just as in the rest of the world); it has also hidden them under a thin veil of social irrelevance. Occasionally, structural problems (such as prisoners' conditions, violence against women, xenophobia and racism, educational poverty in children and adolescents, and the marginalisation and exploitation of undocumented migrants, refugees and asylum seekers) have resurfaced in public debate and political action, often in light of the impact of COVID-19 on those particular vulnerable groups. With the important exception of environmental policies and carbon reduction (on which Europe and Italy have adopted - or are about to adopt - structural commitments), it seems that, for other human rights priorities, there was no great strategy change proposed to counteract the issues that the pandemic so dramatically revealed. Moreover, for many problems, the pandemic has forced them into second place, hiding shortcomings of the system and putting many issues on the backburner.

2021 began with a wave of fresh hope thanks to the arrival of the vaccine. The vaccine is more than just hope though: it is an objective way out of this crisis that is based not only on healthcare but has been developed due to the efforts of human society with all its complexities and the world as a whole. However, vaccinations will not be able to protect us against other consequences of this crisis, nor can we fool ourselves into thinking that a pharmacological or technological response will be enough. Only by engaging the entire network of human and environmental resources of the planet – as well as Italy – can we find a way out of this crisis, just like all the systemic crisis that globalised societies will have to face. The legal, ideal, social and material network of structures that defend and promote human rights is a precious resource in this fight.

Italian Agenda of Human Rights 2021

Like every year, the Research and Editing Committee of the *Italian Yearbook of Human Rights* at the University of Padova Human Rights Centre "Antonio Papisca", offers the updated version of the *Italian Agenda of Human Rights*, built on the basis of analysing the recommendations received from Italy in the international sphere and of the most critical aspects identified in the various editions of the same yearbook. The Agenda should be used as a guide tool for the main initiatives to be carried out in the country, at the legal, infrastructure and policy-making levels, to strengthen the national system to promote and protect human rights and to sharpen the country's contribution to the commitment of the international community to human rights. Previous versions of the Agenda are consultable online at the web address www.annuarioitalianodirittiumani.it.

2020 is the reference period for this edition of the Agenda: the year was characterised by a series of emergency measures to contain and tackle the speak of COVID-19. As stated in the Introduction and in various Parts of the Yearbook, these measures had a significant effect on the enjoyment of fundamental rights in Italy, particularly the rights of those people in marginalised or vulnerable situations (migrants, persons with disabilities, women at risk of domestic abuse, homeless persons, incarcerated persons). Given their exceptional and, hopefully, temporary nature, these measures did not result in new situations that may be introduced in the 2021 Agenda, as the latter is, in essence, a mid- and long-term plan of action. From this perspective, 2020 has been a year on standby. No point or sub-point has been removed from last year's list. Some changes have been made to update some sub-points regarding the adoption of National Action Plans on human rights: some plans have been moved between point 21 (Plans to be adopted), point 22 (Plans to be updated after expiration), and point 23 (Ongoing plans for which Italy must provide more information on their implementation and impact). Finally, following the timely recommendations of the UN Special Rapporteur on the right to food, after her first visit to Italy in 2020 (see Part III, 1.2.3), a new point (No. 12) has been added to the Agenda, regarding the need to revise the legal framework on *caporalato* (agricultural labour exploitation) and to monitor the situation with more effective centralised monitoring mechanisms.

Italian Agenda of Human Rights 2021

Normative level	1) Ratify the following legal instruments at the United Nations and the Council of Europe: a. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; b. Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems c. Treaty on the Prohibition of Nuclear Weapons; d. Amendments to the Rome Statute of the International Criminal Court ("Kampala Amendments"); e. ILO Violence and Harassment Convention (C190); f. Protocol No. 12 to the European Convention on Human Rights; g. Protocol No. 15 to the European Convention on Human Rights; h. Protocol No. 16 to the European Convention on Human Rights; i. European Convention on Nationality; j. Additional Protocol to the Criminal Law Convention on Corruption. k. European Charter for Regional or Minority Languages.
	2) Deposit the instruments of ratification for the following legal instruments for which Parliament has already adopted the relative ratification and implementation laws: a. Convention on Human Rights and Biomedicine (Oviedo Convention); b. Additional Protocol to the Convention on Human Rights and Biomedicine Concerning Transplantation of Organs and Tissues of Human Origin.
	3) Promote the awareness and application of the Declaration on the Right to Peace adopted by the UN General Assembly on 19 December 2016.
	4) Accept art. 25 of the European Social Charter (revised), on the right of workers to protection of their claims in the event of insolvency of their employer.
	5) Withdraw the declaration that 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, provide for the introduction of active and passive voting rights in local elections for foreigners who have been residing in Italy for a certain number of years.
	6) Include hate motivation as an aggravating factor, currently covered by art. 604-*ter* of the Criminal Code, in art. 61 of the Criminal Code on common aggravating factors, since this is then applied to all crimes (except those punished by life sentences).

continued

Normative level	7) Bring the crime of torture, introduced under art. 613-*bis* of the Criminal Code, in line with art. 1 of the UN Convention Against Torture making sure the interpretation given by the Court of Cassation in judgment 8 July 2019, No. 47079 is effectively followed by relevant case-law.
	8) Expressly recognise representative non-governmental organisations within Italian jurisdiction as having scope on issues regulated by the European Social Charter (revised) and the right to present collective complaints pursuant to the 1995 Protocol.
	9) Complete the parliamentary procedure to adopt a law against homotransphobia to combat discrimination and violence based on sexual orientation and gender identity.
	10) Complete the adoption process of parliamentary bill No. 925 on defamation in light of the of United Nations, Council of Europe and OSCE standards.
	11) Continue efforts to reform the system for the prevention and repression of corruption in both the public and private sector, with special reference to the most recent recommendations made by GRECO on the following subjects: indictment for corruption, transparency in party financing, and preventing corruption in Members of the Chamber of Deputies and magistrates.
	12) Revise l. 199/2016 on *caporalato* (labour exploitation) to include criminal/civil responsibility for third parties and consider the creation of a national coordinating body to monitor the impact of the *caporalato* system on the national territory.
Infrastructural level	13) Complete the system of independent national human rights institutions in line with the Paris principles adopted by the United Nations and: a. Establish the National Human Rights Commission; b. Establish the National Ombudsperson.
	14) Ensure the existence of a permanent parliamentary Human Rights Commission, in one or both Chambers.
	15) Assign all Ministries an ad hoc human rights office.
	16) Assign all necessary personnel and financial resources to the independent human rights authorities working in the human rights sector and ensure that the competent personnel is elected in a timely and regular manner.
Implementation of international obligations and commitments	17) Complete the legislative process for the implementation of the Statute of the International Criminal Court as concerns substantive law.
	18) Increase the timeliness and full execution of European Court of Human Rights rulings, including paying out compensation awarded, and improve Italy's capacity to conform to the standards defined by the same Court.
	19) Address as a matter of urgency the issue of the excessive duration of legal proceedings, including those initiated to seek remedy for their excessive duration (including effective payment of compensation).

continued

Adoption of policies	20) Hold an annual debate on human rights in Parliament
	21) Adopt the following national action plans, providing them with suitable tools for monitoring and assessment: a. National Action Plan on the human rights situation within detention structures; b. National Programme on education for democratic citizenship and education and training on human rights c. Integrated Action Plan for Combatting and Preventing cyberbullying; d. National Strategy for Gender Equality.
	22) Update the following national action plans upon expiry: a. National Strategy for Preventing and Combating Discrimination on grounds of gender identity or sexual orientation (last reference period: 2013-2015); b. National Action Plan against Racism, Xenophobia and Intolerance (last reference period: 2013–2015); c. National Action Plan against Trafficking in and Serious Exploitation of Human Beings (2016-2018). d. National Strategic Plan on Male Violence against Women (2017-2020); e. National Strategy for the inclusion of Roma, Sinti and Travellers (2012-2020); f. Second two-year Action Programme for the promotion of the rights and the integration of persons with disabilities (2018-2020).
	23) Implement and provide information on the impact of the following national action plans: a. National Action Plan on Business and Human Rights (2016-2021); b. Fourth National Action Plan on Women, Peace and Security (2020-2024); c. Fifth National Action Plan for the protection of the rights and of the development of children and adolescents (2021-2024).
	24) Formally extend the remit of UNAR to include all forms of discrimination, including those based on language, religion, nation of origin, disabilities, sexual orientation and gender identity.
	25) Implement initiatives to combat hate speech and incitement to hatred.
	26) Ensure sufficient public social spending in the various categories (health, disability, family support, unemployment, social housing and combating social exclusion).
	27) Strengthen efforts to resolve the problem of overcrowding in prisons, making further progress on the structural measures and deflation mechanisms introduced.

continued

Initiatives in specific areas	
Women's rights	28) Promote actual equality between men and women in all aspects of public and private life, specifically through the adoption of policies and actions directed at: a. Reducing the deficit in the number of women represented in the highest decision-making roles in political bodies, including Parliament and Regional Councils, public administration including the Diplomatic Service and in the private sector; b. Reducing the salary gap between men and women; c. Fostering a more balanced sharing of family duties between men and women, both in running the home and in care-giving duties; d. Eliminating stereotypical attitudes on the roles and responsibilities of women and men in the family, in society and in the workplace; e. Encouraging plans for the integration of foreign women f. Tackling and resolving the phenomenon of resignations without a justified reason ("blank resignation letters") for pregnant women and working mothers.
Children's rights	29) Adopt a general legislative measure which enshrines the right of children to be listened to in court, in administrative bodies, in the institutions, at school and in the family on every issue which concerns them directly and establish suitable mechanisms and procedures to this end, to ensure that the participation of children actually takes place.
	30) Amend the Criminal Code so as to explicitly forbid and criminalise the recruitment and the deployment, by either the armed forces or armed groups, of young people under the age of 18 in the course of armed conflicts.
	31) Adopt legislation prohibiting and criminalising the sale of light and small calibre arms to countries which deploy child soldiers.
Citizenship rights; rights of migrants, refugees and asylum seekers	32) Address migratory flows as a structural phenomenon, the systematic planning for which must be assigned to instruments of an ordinary nature (rather than to emergency measures linked to a purely security-oriented viewpoint) and to multi-level governance with the involvement of the relevant ministries, regions, local administrations and civil society.
	33) Respect the principle of non-refoulement, the right of asylum seekers to an individual examination of their case, as well as immediate access to asylum procedures and other forms of national and international protection, including where there are bilateral agreements for return or for cooperation in management of migratory flows.
	34) Implement initiatives that aim to overcome the rigid nature of the Dublin III regulations, in order to meet both the expectations of those seeking international protection and the needs of those communities in Europe who are particularly exposed to the impact of potential asylum seekers.

continued

Citizenship rights; rights of migrants, refugees and asylum seekers	35) Re-establish flexible forms to recognise international protection which take into account the intersectionality of discrimination and other human rights violations that migrants may be exposed to.
	36) Maintain the working spaces for non-governmental organisations involved in search and rescue operations at sea, as required by existing international standards.
	37) Support the activities of the "Roundtable on the Legal Status of Roma", established on 30 January 2013 as part of the National Strategy for Inclusion of the members of these communities, with the objective of finding solutions to the situation of statelessness of large numbers of Roma and Sinti originally from the former Yugoslavia, and of their children born in Italy (the so- called "de facto stateless people").
	38) Develop a more expeditious identification system, in order to reduce as much as possible the period that migrants are detained while waiting for the identification procedures to be completed, ensuring complete respect of the rights of people detained in repatriation centres.
	39) Re-examine laws on citizenship in the light of the principle of *ius humanae dignitatis*, continuing in the direction to simplify the process for acquiring citizenship status pursuant to art. 33 of l.d. 21 June 2013, No. 69 and establishing a form of acquisition of citizenship based on *ius culturae*.

Structure of the Yearbook 2021

Just as in previous editions, the *Italian Yearbook of Human Rights 2021* aims at presenting a snapshot of the human rights situation in Italy, both from a legislative and "infrastructural" point of view, and from that of the practical implementation of policies and initiatives to promote and protect them. This version of the Yearbook looks specifically at the calendar year 2020. The level of detail and background analysis provided in the various sections allows for crosscutting and targeted readings, which can also be developed by consulting the analytical indexes.

The information presented in the first three parts of the *Yearbook* comes from public documents, which are normally consultable via the official webpage for each body examined. For Part IV, the databases of the specific courts cited were used (for Italian case law, most of the data were taken from the Giuffrè *"De Iure"* database). The completed and updated international legal instruments and Italy's behaviour (ratification, signature, or no action) are available online on the University of Padova Human Rights Centre "Antonio Papisca" website.

Part I of the *Yearbook* illustrates the main developments in Italy's incorporation of international and regional standards into its domestic legislation. The overview starts from the international level (United Nations) and moves on to the regional level, comprising legislation drawn up by the Council of Europe and the European Union, before presenting domestic legislation that transposes international obligations into national and regional laws.

Part II illustrates the human rights infrastructure in Italy and is divided into three chapters. The first describes the structure, functions and activities of State bodies (Parliament, Government, the judiciary, independent authorities) and also presents the activities of civil society organisations and academic institutions operating at State level. The second chapter considers the sub-national level of the Italian legal order and illustrates the variegated local and regional human rights infrastructure and the relative coordinating bodies. The third chapter is devoted to the "peace human rights" infrastructure and to initiatives developed in this area by the Region of Veneto. The specific focus on this Region is explained by the pioneering commitment shown by Veneto, dating back to r.l. 18 of 1998, in promoting a culture of human rights, peace and international solidarity.

Part III deals with Italy's position with reference to the international and regional bodies and mechanisms for monitoring the implementation of

human rights. It includes the assessments and recommendations that these bodies have addressed to Italy following specific missions to the State and periodic monitoring activities. The role of Italy within these organisations and the contribution of its diplomatic representatives for the promotion of human rights at regional and global level are highlighted. This Part is subdivided into five chapters. The first focuses on the United Nations system; in particular on the activities of the General Assembly, the Human Rights Council, the Treaty Bodies and the specialist Agencies. The second chapter is devoted to the Council of Europe, while the third to the European Union. These two chapters complement the information presented in Part I (concerning legislation) and in Part IV (concerning case law), relative to Council of Europe and EU activities in 2020. The fourth chapter deals with the Organisation for Security and Cooperation in Europe (OSCE) and its bodies for the promotion of the human dimension of security. The fifth and final chapter is on international humanitarian and criminal law. In this chapter, in addition to providing updates on Italy's level of conformity, there is a list of all international peace missions to which Italian troops contributed in 2020.

Finally, *Part IV* presents a selection of domestic and international case law concerning Italy over the year in question. In the three chapters, cases are subdivided according to the subject to which the judgment refers. The chapters respectively deal with domestic case law (mainly of the Constitutional Court, the Court of Cassation and the State Council), case law of the European Court of Human Rights and case law of the Court of Justice of the European Union, the latter with reference to the cases directly concerning Italy. A targeted reading of the case law is also possible by using the index of case law at the end of the book.

Across these four parts, the Yearbook pays particular attention to the link between the analysis of the main recommendations directed at Italy on human rights and the implementation of the Sustainable Development Goals of the UN Agenda 2030.

The *Introduction* aims at giving the reader a detailed look at some specific aspects of human rights in Italy; in this 2021 version of the Yearbook, it is an investigation into Italy's Third National Action Plan (NAP) for the implementation of the United Nations Security Council Resolution 1325 (2000). This in-depth study was written by Luisa Del Turco of the *Centro Studi Difesa Civile* of Rome.

In-depth study – The Third National Action Plan for the Implementation of the Women, Peace and Security Agenda (2016-2020)*

Introduction

December 2020 saw the conclusion of the implementation period for Italy's Third National Action Plan (NAP) of the Women, Peace and Security Agenda to carry out the United Nations Security Council Resolution 1325(2000). The Third NAP began in December 2016 and was initially scheduled to cover 2016-2019, though it was then extended to include 2020.

The Plan undoubtedly represents a turning point in national policies on the issue, both in substantive aspects (structure and contents) and in approach and method and in its new graphic presentation. Furthermore, the allocation of financial resources within the Budget Law 2017[1] to support the initiatives set out in the NAP allowed a leap in quality compared to international standards.

This in-depth study examines the main aspects in the Third Italian NAP. It highlights both new and continuing elements of the NAP compared to previous Plans in order to study the methods used and priorities that emerged during the implementation process. The text concludes with a reference to the new NAP (2021-2024) adoption process, published in December 2020, which broadens the Plan's perspective, allowing more comparison on an international level.

All documents related to the various NAPs and implementation reports can be found on the Inter-Ministerial Committee for Human Rights (CIDU, within the Ministry of Foreign Affairs and International Cooperation)[2] website.

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* Luisa Del Turco

[1] Budget Law 11 December 2016 No. 232, art. 1, para. 350: "With the aim to elaborate and implement the Third National Action Plan adopted in compliance with United Nations Security Council Resolution No. 1325 (2000) (S/RES/1325) on Women, Peace and Security and with subsequent resolutions, including promotion, monitoring and assessment activities, the spending of €1 million for the year 2017 and €500,000 for each of the years 2018 and 2019 is authorised."

[2] Available in Italian at: https://cidu.esteri.it/comitatodirittiumani/it/informazione_formazione/piano_nazionale_donne_pace_sicurezza.

I Legal Framework

The Third NAP represents the national implementation instrument for Resolution 1325 Women, Peace and Security. Adopted unanimously on 31 October 2000, the Resolution is recognised to have acknowledged and strengthened the role of women in peace processes and peacekeeping action and promotes a gender perspective that was already present within the human rights and cooperation sector.

Resolution 1325 is perhaps the best-known of all United Nations Security Council Resolutions and represents a milestone on which a detailed, international, ten-resolution Agenda is built[3]. The Agenda follows the evolution of the main issues in the peace and security sector of the last twenty years - from multi-dimensional peacekeeping (1325/2000) to protection of civilians (1820/2008); from combatting terrorism and violent extremism (2242/2015) to integrating a human rights dimension (2467/2019). The three main pillars identified in the first Resolution were 'Participation', 'Protection' and 'Prevention'; 'Relief and Recovery' was subsequently added, as well as 'Gender Perspective'. Policies outlining all necessary legal framework were developed from the global to the local level: the European Union and the Atlantic Alliance were particularly influential in defining Italy's commitments within its Plan, and as a result the Italian NAPs often refer to these institutions.

II Italy's commitment

Italy released its first NAP at the end of the year celebrating the tenth anniversary of Resolution 1325 (23 December 2010) and five years after the first ever National Action Plan (Denmark in 2005). The First NAP (2010-2013) represented a decisive step for Italy, joining the relatively scarce number of countries to draw up specific policy dedicated to "Women, Peace and Security". The strategic framework document reiterates the three main UN objectives and identifies six goals for Italy (Table 2): these form the basis of both the first and successive NAPs. In the First NAP, the first three goals concentrate on peacekeeping operations, focusing on participation, gender perspective and training. The perspective widens in the next two Goals, going beyond a pure military outlook: the fourth Goal concerns protection and the fifth refers to Italy's commitment to increase synergies with civil society – a fundamental component of the process which led to the implementation of Resolution 1325. Finally, the First NAP presents its sixth Goal which outlines roles and criteria for monitoring and follow up activities.

The Second NAP (2014-2016) continued the narrative of the previous Plan and expanded in length (over seventy pages plus annexes – the longest out of all NAPs). The legal aspects of Italy's role in peacekeeping missions and developments in the area of defence were notably more prevalent. (Moreover, in compliance with international NATO commitments, these defence develop-

[3] Following Resolution 1325/2000: 1820/2008; 1888/2009; 1889 /2010; 1960/2011; 2106/2013; 2122/2013; 2242/2015; 2467/2019; 2493 /2019.

ments continue to progress in international missions, both within the internal structure of the Alliance and on the ground). A novel aspect of the Second NAP is linked to the evolution of the WPS Agenda itself at an international level: Goal 5 is dedicated to "Strengthening the role of women in peace processes and in all decision-making processes". The new goal refers directly to the participation of women in peacekeeping forces and a commitment to strengthen dialogue with NGOs in the sector.

An in-depth look at the first two NAPs reveals how the reporting elements (in reference to projects and actions that were carried out, though not necessarily within the WPS Agenda: female genital mutilation, human trafficking, domestic violence) can prevail over programming elements.

Despite some clear limitations, the first two national Plans lay down a good basis for successive development and define some fundamental aspects: priority goals, the role of the CIDU as a focal point of the NAP with monitoring and implementation functions, the strengthening of cooperation with civil society - highlighting with clarity and consistence the significant role which Italy has wanted to play in this sector in the last ten years.

III The Third Plan and its characteristics

The Third NAP essentially follows the structure of the previous two plans, with some important changes: the format and graphics, published in an elegant brochure including work from the prestigious art collection of the Ministry of Foreign Affairs.

The Plan opens with two forewords. The first is by the then-Minister for Foreign Affairs and International Cooperation Paolo Gentiloni, demonstrating the political significance of this Plan. There are ground-breaking elements in the language used: the NAP focuses on the situation of women as "survivors and, overall, 'agents of change'". The approach of "integrated and holistic multi-stakeholders" is also innovative, foreseeing the full involvement of various actors (civil society organisations, academia, private sectors and trade unions) and the link between different dimensions of peace, development and human rights, in line with the Agenda 2030 for Sustainable Development. The second foreword is written by the President of the Inter-Ministerial Committee for Human Rights, Min. Plen. Fabrizio Petri (whose work has significantly contributed to strengthening cooperation with civil society organisations since 2016). It points out the relevance of the Sustainable Development Goals for the NAP (SDG 5 and 16) and highlights the "transformative potential" of the WPS Agenda, a particularly meaningful aspect for civil society organisations. For the first time, the NAP drafting process saw the direct involvement of many civil society actors via the dedicated Platform 'Gender-sensitive Interventions and Peace Processes' (GIPP), in particular contributing to the methodology and contents of the plan. This enhanced the role of civil society organisations and civilian interventions within the NAP, playing an important role in the drafting of various parts of the text (notably in Goal 1.5, Goal 1.6, Goal 3.8, and Goal 6.4).

The General Part contains a Statement of Commitments and outlines the methodology of the Plan. Within the Statement of Commitments, the "Ultimate Goal" of the Plan can be found, updating the previous plans' objectives which the Italian Government endeavoured to achieve "from a substantive standpoint" (see Preface of the Second Plan). This formula will stay the same in the Fourth Plan (see Table 1).

Tabella 1

Government Targets	**Ultimate Goals**	
NAP II (2014-2016)	NAP III (2016-2020)	NAP IV (2020-2024)
1. Reducing the impact of conflict on women and children 2. Promoting their inclusion in the processes of prevention and resolution of conflicts, as well as their participation in decision-making processes at all levels 3. Raising awareness, educating and strengthening existing structures	1. To reduce the impact of conflict on women and children and in particular girls, while promoting their meaningful and transformational participation in the processes of prevention, mitigation, and resolution of conflict, as well as in decision-making processes, at all levels 2. To raise awareness, educating and strengthening existing structures, on Women, Peace and Security Agenda and related issues	

Even though the "Participation" dimension has been lauded as "effective and transformative", within the Ultimate Goals of the Third Plan, "Participation" (which the Second NAP described as "inclusion in the processes of prevention and resolution of conflicts") loses its stand-alone status and is in some ways incorporated into the aims of "Protection" ("Reducing the impact of conflict on women and children"). Specific commitment is made to awareness-raising and education on the Women, Peace and Security Agenda; Italy has always paid particular attention to this issue and has further strengthened it in the new NAP (2020-2024).

The methodology of the Third Plan shows it as a living document, which could undergo changes and amendments over the course of the three-year implementation period. It strengthens its "strategic contents", rendering this Plan more structured, organized and concise. The Plan follows an internationally recognised structure (like, for example, the corresponding Dutch NAP 2016-2019) organised into Goals, which consider Commitments and Actions, each linked to Actor/s concerned and Progress-related Indicators.

The Operational Part of the Third NAP sets out seven goals (the highest number out of all the previously adopted NAPs), returning to the Goals from previous NAPs, and integrating them into the new NAP. Three of these Goals correspond to the pillars of the international WPS Agenda: Participation (Goal 1), Gender Perspective (Goal 2) and Protection (Goal 5). In these three fields, the scope is considerably broadened compared to previous Plans, adding the civil aspect to the traditional roles and responsibilities of Armed Forces initiatives.

Goal 1, dedicated to "Strengthen the role of women in peace processes and in all decision-making processes" – while the Commitments continue to refer specifically to peace processes, Italy's Actions feature "international policy development" (Goal 1, Action 1 – Action 1.1). It stays on the issue of peace processes and reconstruction, focusing on building the capacity of women and their CSO groups (Action 1.2), while also linking Disarmament, Demobilization and Reintegration (DDR) to electoral processes, justice and finance (Action 1.4). It also foresees the continuation of sharing best practices using "relevant women's experience to highlight their transformative role" (Action 1.6). At a grassroots level, one action concerns the role of young women and men (Action 1.5): it presents information received from civil society and recent developments in international agendas, in particular the adoption of the Youth, Peace and Security Agenda (United Nations Security Council Resolution 2250/2015). The NAP strengthens Italy's commitment in one other fundamental aspect of the Women, Peace and Security Agenda: the role of women in mediation. This is demonstrated through the creation of a Network of women mediators from the Mediterranean area (Action 1.3), which will carry out a central and driving role in all Italy's commitment in this field.

Goal 2 on "gender perspective in peace operations" also takes on a broad view, encompassing the issue of development cooperation (Action 2.1), as well as peacebuilding (Goal 2.2), empowerment and capacity building (Action 2.3), and engaging various civil society stakeholders (Agency for Development Cooperation (AICS) and the Italian Platform for Civil Peace Interventions (ICP), cited respectively in Actions 4 and 5 of the Goal). In reference to the figure of Gender Advisor and Gender Focal Point, the focus is on both the military and civilian sectors (Goal 2.6).

This wider perspective is also adopted in Goal 5, dedicated to "protecting human rights of women and girls, in conflict and post-conflict areas", with initiatives in every phase of the action. Among the most relevant: prevent and respond to violence against women in emergency and conflict-related situations (Action 5.1); support the relief, recovery and rehabilitation (Action 5.2); accountability in case of violations (Action 5.3). Alongside these, there is a series of initiatives regarding the protection of women refugees and asylum seekers (Actions 5.4; 5.6; and 5.7), which are not always considered central in this sector.

Two Goals of the Plan are dedicated to specific stakeholders.

Goal 4 is dedicated to the Armed Forces and Police forces and their prominent role in peace missions. It demonstrates Italy's commitment to encouraging the active and meaningful participation of women in decision-making and in deployments (Action 4.1), to ensuring the increase of female personnel (Action 4.2). It specifically supports the Office that oversees relevant training programs and the integration of a gender perspective (Action 4.4), while one action specifically refers to deploying Italian female military and civilian personnel to International Organizations (Action 4.3).

Goal 6 describes "Increasing synergies with civil society". Italy confirms its commitment to develop "structured regular dialogue" (Action 6.1) with

actively-involved-on-the-matter civil society organisations. Furthermore, the NAP supports its action on the territorial dimension (Action 6.2) and foresees financing training for local NGOs on the WPS Agenda (Action 6.3) and for Italian civil society organizations (Action 6.4). This latter action was brought up in consultation with Civil Society Organisations and will be significant impactful.

One Goal of the NAP is dedicated to Training (Goal 3), which is one aspect that Italy has enhanced in accordance with the "Ultimate Goals" shown above (Table 1). Once again, although the Goal refers "in particular to personnel taking part in peace operations", the approach is wider than this; participants in the training initiatives include (alongside Armed Forces) Police and Security Forces (Action 3.5), local forces in post-conflict areas (Action 3.2), qualified civilian experts and the Civilian Peace Corps (in light of the new Italian law on international missions, law 145/2016) (Action 3.8) and personnel in many other sectors (diplomatic, development, health, peace and defence-related) (Action 3.1). This outlook extends to the training contents, including that content that is not directly linked with the WPS agenda or humanitarian law, but also international human rights law issues. This resonates particularly in direct training in justice institutions, where there are also non-discrimination related issues (Action 3.3). One action describes the further dissemination and expansion of the Roster of Experts on UNSCR1325, posted on CIDU website (Action 3.4).

Compared to previous plans, the Third NAP adds Goal 7 dedicated to "Strategic communication and result-oriented advocacy" (respectively Action 7.1 and Action 7.2). Communication is given particular attention, shown through the organisation of a specific workshop chaired by the President of CIDU and carried out with representatives of the media and the Directorate General for Cultural Affairs of the Ministry of Foreign Affairs and International Cooperation, and with the media sector. This communication reaches out to a wide audience, especially young people (Action 7.1.1) – through social media (Action 7.1.3) – and including third countries (Action 7.1.2). Italy's commitment to advocacy initiatives at an international level has also been strengthened, particularly in relation to its role in the areas of the United Nations Security Council and the G7 Presidency. This advocacy aims to encourage the strengthening of their policies on issues of Women, Peace and Security in international missions, such as the Peacebuilding Commission and the specialist teams within peacekeeping operations (Action 7.2.1), in dialogue with third countries and in international partner agencies (Action 7.2.2), within the EU and G7 (Action 7.2.3) in the area of relevant international human rights instruments and initiatives (CEDAW, Istanbul Convention, Beijing Platform, Call to Action on Protection from Gender Based Violence in Emergencies, Agenda 2030 - Action 7.2.2) and in the area of "Protection" (Action 7.2.4).

Monitoring and evaluation are not part of the Plan's goals; however, they are featured at the end of the document. Firstly, it confirms the publication of an annual report, produced by the CIDU in consultation with civil society organisation and Parliament (including the All-Party Women's Caucus, founded in 2015). The Open-Ended Working Group 1325 - OEWG (led by

the CIDU) - that acts as a focal point - is responsible for implementing and monitoring the plan alongside the UN Office of the General Directorate for Political Affairs and Security (DGAP). The group is made up of various institutions: the Ministry of Foreign Affairs and International Cooperation - General Directorate for Development Cooperation; Agency for Development Cooperation (AICS); the Ministry of Interior; the Ministry of Defence; the Ministry of Health; the Ministry of Justice; *Guardia di Finanza* Corps; the Department for Equal Opportunities; the National Institute of Statistics (ISTAT); the National Institute for Health, Migration and Poverty (INMP); the Italian broadcasting service – RAI Culture Channel (*RAI-Cultura*); and Office of the UNHCR in Rome. The group meets three times a year.

The choice to move the background explanation to one of the Plan's Annexes renders the operational part of the NAP more streamlined and accessible (in previous Plans, this was covered in the Introduction).

Overall, this Plan is without doubt more structured and efficient than other previous Plans. The plan concentrates more on the issues specifically concerning the WPS sector, setting out a major initiative focusing on peacemaking which aims to showcase and amplify Italy's role at the international level, and at the same time eliminating some issues that are less central to the WPS Agenda (e.g., the reference to female genital mutilation - present in previous NAPs - has been removed).

Furthermore, the multistakeholder approach and active involvement of civil society organisations has produced valuable references to critical points of Resolution 1325, for example "Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements" (Main Goal 8b). There lies the heart of the "transformative potential" of Resolution 1325, based on the active role of women in promoting a positive, inclusive and sustainable peace. The NAP foresees capacity-building of women and their Civil Society Organisations groups to engage in "prevention and response efforts for national peace process and reconstruction" (Goal 1.2), as well as than engaging the Italian Platform for Civil Peace Interventions (*Tavolo Interventi Civili di Pace* – the civil society organisation network working to support the development of Civil peace interventions in conflict zones founded in 2007 as a place to promote dialogue with the Ministry of Foreign Affairs and the National Civil Service Office). Other notable actors come from the private sector, to which the NAP has dedicated Action 5.5 and Action 6.5. These are also the focus of another specific National Action Plan (Business and Human Rights, 2016-2021[4]).

One of the main focuses of the NAP is still the military peacekeeping missions. This choice is in part down to the prevalent role of the Armed Forces in international missions, acknowledging the results of the Italian Armed Forces in the WPS section, outside any actions laid out in the NAP or its possible impact (see Vinciguerra R. (edited), "Women, Peace and Secu-

[4] https://www.cidu.esteri.it/resource/2016/12/49118_f_PANBHRITAFINALE15122016.pdf.

rity. The experience of the Italian Armed Forces", *Informazioni della Difesa* (publication of the Ministry of Defence), 2018). The result of this is that the plan is still skewed towards the military: the civilian aspect remains weaker in comparison. Furthermore, in the background section of the NAP, Italy holds that it intends to "strongly support" EU action in this area, however, the text lacks any reference to missions carried out within the field of Common Security and Defence Policy (CSDP). These include both peacekeeping missions and prevention and post-conflict stabilisation initiatives, in which the civil component is particularly important.

The NAP's integrated approach demonstrates a general trend of the past ten years of linking relief, rehabilitation and development. This has evolved in its most recent form into the new way of working, which sees a synergetic mix of the humanitarian, development and peace sectors. Even in this form, however, the NAP is unbalanced: the "protection" actions (humanitarian/human rights) take precedence and there are many references to the "development" sector, the actions relating to "peace and security" are not fully developed.

The missing peacebuilding dimension translates in a conspicuous lack of any goals dedicated specifically to "prevention" in all of Italy's NAPS – Prevention should be considered one of the fundamental pillars of the international WPS Agenda, as highly stressed by the 2015 Global Study on WPS (A Global Study on the Implementation of United Nations Security Council Resolution 1325, and the United Nations Entity for Gender Equality and the Empowerment of Women), which is part of the *Peace and Security Review* of 2015, which also included reports on peace operations (HIPPO Report) and peacebuilding architecture (AGE Report).

Finally, besides the contents of the NAP, there are certain weaknesses in some crucial aspects of the framework and international debate in the last few years: the internal coherence, highlighting an uncertain correlation between some of its provisions and the goals - commitments - actions; the lack of SMART (Specific, Measurable, Achievable, Relevant and Time-bound) indicators; la lack of an effective monitoring system. These limitations were more evident in preceding NAPs but are less acceptable in the Third Plan given the current number of best practices available to access at all levels (United Nations and International Alert, 2010, Planning for action Women and Peace and Security. National Level Implementation of Resolution 1325 (2000); UNWOMEN, 2011, Women and Peace and Security: Guidelines for National Implementation; OSCE and Inclusive Security, 2016, Result oriented National Action Plans on Women Peace and Security, Informal EU Taskforce on UNSCR 1325, 2016, report of the Workshop on UNSCR National Action Plans, promoted in cooperation with the Dutch MOFA, EEAS, EPLO WO=MEN and the IIS, Amsterdam, 7 March 2016).

Furthermore, Italy's shortcoming in adopting some international standards makes it difficult to assess the status of implementation of the NAP, as will be seen in the following sections.

Table 2 – Italy's NAPs on Women Peace and Security – Comparing Goals

	NAP I (2010 - 2013)	**NAP II (2014 - 2016)**	**NAP III (2016 - 2020)**	**NAP IV (2020 – 2024)**
Goal 1	Increasing the number of women in the national police and armed forces, and strengthening the inclusion of women in peace operations and the decision-making bodies of peace operations	Enhance women's presence in the national Armed Forces as well as within national police forces, by strengthening their role in decision-making processes related to peace missions	Strengthening the role of women in peace processes and in all decision-making processes	Strengthen – on a continuous and lasting basis - the role of women in peace processes and in all decision-making processes, also increasing synergies with civil society, in order to effectively implement UN Security Council Resolution 1325(2000) and the WPS Agenda
Goal 2	Promoting the inclusion of a gender perspective in all Peacekeeping Operations	Promoting a gender perspective in *peace-support operations*	Continue to promote a gender perspective in peace operations	Continue to promote a gender perspective in peace operations and enhance the presence of women, in particular in the Armed Forces and Polices Forces, strengthening their role in decision-making processes relating to peace missions and in peace conferences
Goal 3	Providing special training for personnel on peace missions, with a focus on Res.1325 (2000)	Ensuring specific training on the various aspects of UNSCR 1325, in particular to personnel taking part in peace operations	Continue to ensure specific training on the various cross-cutting aspects of UNSCR1325 (2000), in particular to personnel taking part in peace operations	Contribute to promote gender equality, empowerment and protection of women and children, especially girls and young women, as well as respect for human rights of women and children, especially girls, in conflict and post-conflict areas, increasing synergies with civil society, in order to implement UN Security Council Resolution 1325(2000) and the WPS Agenda

continued

Goal 4	Protecting the human rights of women, children and other vulnerable groups either fleeing armed conflicts or living in conflict and post-conflict areas (including in refugee camps) and strengthening women's participation in peace processes	The protection of human rights of women, children and the most vulnerable groups fleeing from conflict areas and/or living in post conflict zones	Further enhance women presence in the national Armed Forces and within national Police forces, by strengthening their role in decision-making processes related to peace missions	Strengthen strategic communication and result-oriented advocacy, by bolstering the Italian participation in relevant fora, conferences and mechanisms (…), to further support the implementation of the WPS Agenda while continuing to ensure the enhancement of information and training at all levels, on the various cross-cutting issues of UNSCR1325(2000), in particular for the personnel participating in peace operations, including by increasing synergies with civil society and universities, in order to effectively implement UN Security Council Resolution 1325(2000) and the WPS Agenda
Goal 5	Civil Society's commitment to the implementation of Res.1325 (2000)	Strengthening the role of women in peace processes and in all decision-making processes	Protecting human rights of women and girls in conflict and post-conflict areas	
Goal 6	Monitoring and follow-up activities	The Contribution of Civil Society to the enforcement of UNSCR1325	Increasing synergies with civil society, to implement UNSCR 1325(2000)	

continued

Goal 7		Monitoring activities and follow-up on operations	Strategic communication and result-oriented advocacy: 7.1 Engaging in strategic communication 7.2 Bolstering Italy's participation in relevant fora, conferences and mechanisms, to further support the implementation of the Women. Peace & Security Agenda	

IV Funding, Public Calls and Projects, Periodic Reports

Although there is a distinct lack of reference to spending in the text of the Third NAP, the funds provided to realize the Plan have added momentum that has proven crucial for its successful implementation.

The financial resources were allocated via an amendment of the Budget Law 2017, first signed by Hon. Pia Locatelli (Socialist Party); Hon. Lia Quartapelle (Democratic Party), now Chair of Advisory Board of Women in International Security - WIIS Italy, is among its supporters. Given that the implementation period was extended, the Government allocated a total of €500,000 for 2020. The decrees allocating and distributing the funds were published annually (2017; 2018; 2019; 2020), resulting in limited time for action to be carried out but that clearly indicated the subjective requirements for requesting finances and the inclusive criteria for distributing funds.

For more useful information on the overall implementation of the Plan, the CIDU has produced numerous documents, compiled into an annual progress report.

Before going into more detail, it is apt to first outline some general considerations.

The way in which the Plan is structured (various thematic areas, two focused on single stakeholders) makes it impossible to define a clear and comprehensive evaluative framework. The progress reports are based on information provided by the stakeholders themselves, with no predetermined criteria and on a voluntary basis, creating the risk of inconsistency, gaps in reporting, verification limits and setbacks. (At time of writing, the third and final progress report on the Third NAP, 2020, has not yet been published). Initiatives and actions have not been categorised according to the funding sources (various

donators or self-financed) which hinders any precise assessment of any financial commitments, which are also not set out in the Plan (neither specifically for each individual initiative nor overall). In addition to reporting, there has been no systematic evaluation of the "progress and performance in implementing this plan". This is despite the fact that these promotion, evaluation and monitoring actions were foreseen by the NAP and despite the civil society pressure and explicit indications on possible spending for the money allocated for these actions.

That being said, it is possible to infer some important information from the reports. This is also true for those stakeholders who have petitioned (in the regular OEWG meetings) for an internal exchange of information and best practices. Some of the projects financed by the NAP have contributed to this exchange[5].

In the following section, the outline of the organisational structure for interventions will be discussed.

V Implementing the Third NAP 2016–2020

Peacekeeping

As previously mentioned, all of the Italian NAPs focus on the central role of peacekeeping operation activities. Moreover, WPS initiatives in the field of defence have been developed and carried out over many years outside the provisions of the NAPs.

In practice, initiatives carried out relating to Goal 4 (peace operations) are succinctly reviewed in the implementation reports of the Third NAP and have been shown to be meaningful, especially in terms of their practical and operational implications. These principles include: the role and committed activities to the organisation and articulation of "Gender Policies" by the Italian Defence Staff; inter-force meetings on the issue; participation in the NATO Committee on Gender Perspective. Other considerations were more operational, including CIMIC projects (Civilian-Military Cooperation) for women, and the establishment of dedicated professionals in operation areas (e.g., in Afghanistan). Alongside these, it is important to remember the concept of gender budgeting and the role of women in promoting the image of the Armed Forces and the police force.

Many activities in the field of Defence have been carried out in accordance with the NAP Goals. More specifically, Goal 2 (gender perspectives in peace operations) lays out training courses for Gender Advisors (for commissioned officers) and Gender Matter Focal Point (for non-commissioned officers). Some specific actions concern the *Carabinieri* corps, especially reporting initiatives within the COESPU (Center of Excellence for Stability Police

[5] See, for example, the description of ongoing projects by the University of Padova Human Rights Centre "A. Papisca": <https://unipd-centrodirittiumani.it/it/attivita/Donne-Diritti-Umani-e-Processi-di-Pace-2018-2019/1166>.

Units), establishing a dedicated professional figure, organising conferences and participating in training courses both in Italy and abroad. Goal 2 also reports on various non-military activities. Within the EU, these include Italy's participation in the Task Force on UNSCR 1325 and the presence of women within civilian staff (experts in secondment regimes) in PESC/PSDC missions. Other projects on combatting female genital mutilation (promoted by AICS in Afghanistan) and the commitments made by the Italian Cooperation during the World Humanitarian Summit with regards to protecting women in emergency situations were also featured. Some actions seem to have been limited in their implementation: information sharing with the overseas AICS offices to exchange up-to-date information on sector-based projects, and dialogue with the ICP Platform (respectively, Action 2.4 and Action 2.5). An important result in the field of cooperation was the updating of the "Guidelines on gender equality and empowerment of women, young women and girls (2020-2024)" which specifically refers to the WPS Agenda. In relation to Goal 2, attention must be given to training activities on human rights and the production of a manual (edited by the International Institute of Humanitarian Law of San Remo).

Finally, Goal 3 (dedicated to personnel training in peace operations) highlights the commitment in NATO (including the Civil Society Advisory Panel), the training of women in the Security Sector Reform (SSR) in Afghanistan, the commitment of Female Engagement Teams (FET) and the treatment of the themes of the WPS Agenda and the inclusion of the WPS Agenda related issues in CIMIC cooperation training courses at Motta di Livenza (Veneto). The same section also spoke about less central thematic areas (human trafficking and migration).

Peacemaking

The Third NAP presents a different priority for interventions: *peacemaking,* one of the central spheres of the WPS Agenda in which it is still challenging to produce significant results.

One new initiative promoted by Italy in the field of international mediation is the creation of the Mediterranean Women Mediators Network (MWMN), joining other similar geographical-based organisations (see Global Alliance of Regional Women Mediator Network). The Network is sponsored by the Ministry of Foreign Affairs and International Cooperation, in collaboration with the Institute of International Affairs (IAI) and Women in International Security *Italy* (WIIS). It was founded in Rome in October 2017 as part of Italy's mandate in the Security Council and the Italian Presidency of the G7. Among the various initiatives, it offers training courses for female mediators, networking opportunities, and opened its first Antennas in Cyprus (17 May 2019) and in Turkey (29 June 2019). MWMN is now the leader in the Global Alliance of Regional Network of Women Mediators, launched in September 2019 in New York on the margins of the General Debate during the opening of the 74th United Nations General Assembly. There is a specific section of the NAP and significant resources dedicated to the Network, with the aim of strengthening the outcomes of Goal 1.

This also includes other significant actions, such as Italy's participation in national Focal Points meeting and a series of initiatives in areas of crisis worldwide (Palestine, Afghanistan, Lebanon, Colombia) carried out at various levels (from the Agency for Development Cooperation to NGOs).

Following an appeal from an NGO (AIDOS), the Italy NAP is now financing projects promoted by civil society organisations, both domestic and overseas.

Protection

The "Protection" sector (Goal 5) is shown to be of great importance to Italy by its ongoing commitment to action. Numerous financial multi-lateral initiatives have been recorded, from humanitarian action to human rights protection. The periodic reports list these actions in great detail (the second report dedicates twenty-four out of a total of fifty-seven pages to initiatives relating to this Goal) as well as related development initiatives. Various humanitarian projects in this field have also been financed: funds have been allocated to humanitarian NGOs (INTERSOS, Action Aid), multi-stakeholder channels (UNHCR, UNFPA, UNWOMEN, UNICEF) in various countries (for example, Palestine, Iraq and Sudan) and also to support migrants.

That Italy favours the "Protection" aspect of the NAP can also be inferred by outcomes relating to Goal 7, which highlights the international initiatives in which Italy is highly involved. Among these: the call to action against gender-based violence in emergency situations, launched in 2013; OSCE and G7 initiatives; supporting communication activities by civil society organisations; and supporting the Stop Rape – Italy campaign. Italy's most recent advocacy initiative was the launch of Open Pledge presented during the 33rd Conference of the Red Cross and Red Crescent in Geneva in 2019 entitled "*Protect the Rights of Children Affected by Armed Conflicts*". It aims to ensure that all children can live in safety and enjoy their fundamental rights, even in conflict situations. This initiative will lay down a basis for the next Fourth Plan (2020-2024), the first to have a specific thematic focus: the protection of girls (and boys) in armed conflicts.

Civil Society

The implementation of Goal 6 (dedicated to civil society) seems to have had some success. All reports refer to the numerous implementation initiatives, many of which consist of training on the issue of "Gender, Peace and Security". Some of these activities, as indicated in the NAP (Goal 6.4), were directed specifically at civil society organisations. One course at the University of Padova (similar to the Gender Advisor course for military personnel) aimed to develop specific competencies for civil society organisations. It targeted CSO operators, a group who in the past have been excluded from these types of practical and operative training courses within the sector. The initiative produced tangible results, including the adoption of a gender policy within civil society organisation (e.g., ARCI ARCS) and greater gender mainstreaming in projects carried out in crisis areas. These aspects are exceptionally relevant when considering the limited number of Italian organisations working on these issues. Other training initiatives were set up (for civil society) through

specific university modules within pre-established study programmes (Sapienza University, with access made easier with the offer of a study grant) or targeting specific groups (University of Perugia, focusing on migrants), alongside other initiatives set up for civil society but targeting military personnel up and down the hierarchy (workshops organised at the International Institute of Humanitarian Law of San Remo). The choice to include these activities in a goal devoted to the civil society rather than to training of stakeholders (Goal 3) seems to convey that the direction set for Goal 3 is more dedicated to military peacekeeping, in addition to the fact that the Universities involved in the initiatives developed them in partnership with civil society organisations (University of Padova – CSDC; La Sapienza University – ACDMAE; University of Perugia - FIDEM). With regard to involving the private sector, for the moment this seems be limited to a reference to the development of the National Plan "Business and Human Rights".

Conclusions

In conclusion, it is useful to broaden the scope of vision and consider certain characteristics of the Italian NAP within the overall emerging trends of all National Action Plans on the WPS agenda.

The fact that Italy has completely re-written the text of its NAP, both in its structure and contents, shows the country's growing dedication and commitment in this field. This is further demonstrated by the 2017 budget that was reserved solely for this issue, putting Italy in the group of States (however small) who have financed these plans (around 25% of over ninety adopted worldwide).

The Italian NAPs tend to focus on peacekeeping, and more recently on peacemaking, and regard Italy as an "external party" to conflict the situations referred to in the WPS Agenda. This is very common for European countries, and typical for the NAPs of States that have not recently lived through open or widespread conflict. As evidence of this, countries that tend to favour peacekeeping efforts will usually assign the Ministry of Foreign Affairs to take a leading role in planning and implementing NAPs, as can be seen in Italy.

Furthermore, even though institutional stakeholders are still leaders in the sector (as can be seen globally with almost no exceptions), the drafting process of the Third NAP shows that involving civil societies in this procedure is not in any way "superficial" or marginal.

Moreover, the structure of the NAP does not fully correspond to the four main pillars laid out by Resolution 1325, and on which most other countries base their NAPs: "Participation", "Protection", "Prevention" and "Relief and Recovery". The Italian NAPs add original and specific aspects to their Plans, for example, communication and training (which in the Fourth NAP will be set out in one single Goal), whereas other countries include terrorism, oversight, transitional justice, natural disaster and so on. The Italian NAPs (as in other countries, e.g., Spain) is missing a specific Goal on the issue of "Prevention", an aspect which is present in the leading countries in the

sector (Finland, Belgium, The Netherlands, Norway, Sweden). This aspect is a fundamental pillar of the NAPS and is growing in importance, although it is often conceived in the reductive view of simply preventing gender-based violence and not – as originally envisioned – as the prevention of armed conflict (see Caitlin Hamilton, Nyibeny Naam, and Laura J. Shepherd "*30 Years of Women, Peace and Security National Action Plans: Analysis and Lessons Learned*", the University of Sydney, 2020).

Finally, Italy's current tendency to resolve tension between the two main pillars by prioritising "Protection" over "Participation" (which was originally prevalent in NAPs) is in line with the evolution of the WPS Agenda. It is progressively developing more towards including human rights issues.

Therefore, the evolution of the Italian NAPs seems to follow global trends.

However, there seems to be some internal contradiction within the NAP, which may be due to a failure to adhere to the general principles established within the NAPs themselves. These premises specially refer to the "transformative power" WPS Agenda with the view of enhancing it, whereas the two sections which most emphasise this invaluable potential ("Prevention" and "Participation") have been cut down both in the elaboration and the implementation of the NAP.

The lack of reference to peacebuilding (both non-governmental and institutional) in the text of the NAP are therefore a missed opportunity, one which could however be rectified by taking advantage of recent developments in politics and in the national and international attitudes. Internationally, this means centralising the inclusion of "Peace" in the Sustainable Development Goals (Agenda 2030) and the development of the "Triple Nexus" approach (Humanitarian-Development-Peace). In Italy, this could include a focus on the new law on international cooperation (which incorporates peace work into its main aims) and the new law on Italy's participation in international mission, which includes Civilian Peace Corps (innovative, yet the Third NAP refers to it only in connection with training) as partners in their own right (on the same level as the military and civilians).

Continuing with a comparative perspective, there is another aspect in a crucial context to consider: monitoring and evaluation. There is much good practice and experience coming out of other countries that indicate possible developments in these fields: inclusion of external institutions, financing shadow reports from civil society bodies, and involving independent experts. Fine-tuning this into an effective system may help to better identify areas of strengths and weaknesses in the implementation of policies regarding the WPS Agenda, and to effectively envision steps to be taken in the future.

These conclusions are presented in the hope of providing a constructive contribution for future developments and implementation of the new NAP, which, thanks to the unquestionable strength and commitment of civil society institutions and stakeholders, will play a crucial part in the cause of human rights and peace in the country.

PART I – THE RECEPTION OF INTERNATIONAL RULES ON HUMAN RIGHTS IN ITALY

International Human Rights Law*

The first Part of the *Yearbook* is divided into two chapters. The first is devoted to updates concerning the major international human rights instruments that Italy has ratified, as well as to the identification of both international instruments signed, but not ratified, by the country and those adopted in 2020 that have not been subjected to any initiative of acceptance yet.

This summary is particularly relevant from the implementation point of view of the Agenda 2030 for Sustainable Development, more than 90% of which is deeply rooted in the numerous international instruments that constitute international human rights law. From this perspective, as in previous editions, there are no differences in Italy's status of acceptance of international human rights treaties.

More specifically, many of the commitments set out in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the only core treaty which Italy has neither signed nor ratified) refer to targets in the Agenda 2030, particularly Goal 3 (Good Health and Well-being), Goal 4 (Quality Education), Goal 8 (Decent Work and Economic Growth), Goal 10 (Reduced Inequalities) and Goal 16 (Peace, Justice and Strong Institutions).

The framework of Italy's international obligations takes into consideration the universal conventions adopted within the system of the United Nations, the conventions of the Council of Europe, and also the European Union treaties and secondary law. Accordingly, the information provided is preliminary to the presentation of the national normative apparatus – the Constitution, national and regional laws – which is the subject of the following chapter.

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I Legal Instruments of the United Nations

In 2020, Italy did not file new instruments of ratification.

II Legal Instruments on Disarmament and Non-proliferation

In 2020, Italy did not file new instruments of ratification.

III Legal Instruments of the Council of Europe

On 15 December 2020, Italy ratified the Framework Convention on the Value of Cultural Heritage for Society (Faro Convention), which was signed on 27 February 2013.

IV European Union Law

A Treaties

As envisaged by the Treaty of Lisbon, since 1 December 2009, the EU legal framework has consisted of two fundamental instruments: the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). Art. 6 TEU attributes the status of primary law to the Charter of Fundamental Rights of the EU, and also refers specifically to the rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and those deriving from the constitutional traditions common to the Member States, which are part of EU law as general principles.

Furthermore, in the Preamble of the TEU, explicit reference is made to the 1989 Community Charter of Fundamental Social Rights of Workers and the 1961 European Social Charter of the Council of Europe (revised in 1996). Both these instruments are also mentioned in the TFEU in the context of Title X on Social Policy (art. 151).

B EU Law in 2020

In 2020, the European Parliament and the Council of the EU adopted directives, regulations and decisions with particular relevance for human rights. For its part, the European Commission presented significant communications and legislative proposals.

In 2020, the following directives were adopted: as regards pests of plants on seeds and other plant reproductive material, Commission Implementing Directive amending Council Directives 66/401/EEC, 66/402/EEC, 68/193/EEC, 2002/55/EC, 2002/56/EC and 2002/57/EC, Commission Directives 93/49/EEC and 93/61/EEC and Implementing Directives 2014/21/EU and 2014/98/EU (2020/177 of 11 February 2020); as regards introducing certain

requirements for payment service providers amending Directive 2006/112/EC (2020/284 of 18 February 2020); as regards the establishment of assessment methods for harmful effects of environmental noise amending Annex III to Directive 2002/49/EC of the European Parliament and of the Council (2020/367 of 4 March 2020); as regards adaptation to scientific and technical progress amending the Annexes to Directive 2008/68/EC of the European Parliament and of the Council (2020/1833 of 2 October 2020); on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (2020/1828 of 25 November 2020); as regards the prohibition of allergenic fragrances in toys amending Annex II to Directive 2009/48/EC of the European Parliament and of the Council (2020/2089 of 11 December 2020); on the quality of water intended for human consumption (2020/2184 of 16 December 2020). Regarding COVID-19, the following directives were adopted: as regards the inclusion of SARS-CoV-2 in the list of biological agents known to infect humans and amending Commission Directive (EU) 2019/1833 (2020/739 of 3 June 2020);; to address the urgent need to defer certain time limits for the filing and exchange of information in the field of taxation because of the COVID-19 pandemic amending Directive 2011/16/EU (2020/876 of 24 June 2020); as regards temporary measures in relation to value added tax applicable to COVID-19 vaccines and in vitro diagnostic medical devices in response to the COVID-19 pandemic amending Directive 2006/112/EC (2020/2020 of 7 December 2020).

Various regulations in the field of human rights were adopted in 2020: Regulation 2020/1783 of 25 November 2020, on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence); Regulation 2020/1784 of 25 November 2020, on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents); Regulation 2020/2223 of 23 December 2020 amending Regulation (EU, Euratom) No. 883/2013 as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations; Regulation 2020/2174 of 19 October 2020 amending Annexes IC, III, IIIA, IV, V, VII and VIII to Regulation (EC) No. 1013/2006 of the European Parliament and of the Council on shipments of waste; Commission Delegated Regulation 2020/621 of 18 February 2020 amending Annexes I and V to Regulation (EU) 2019/125 of the European Parliament and of the Council concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment; Regulation 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and; Regulation 2020/1041 of 15 July 2020 amending Regulation (EU) No. 1303/ as regards the resources for the specific allocation for the Youth Employment Initiative; Regulation 2020/851 of 18 June 2020 amending Regulation (EC) No. 862/2007, on Community statistics on migration and international protection; Regulation 2020/461 of 30 March 2020 amending Council Regulation (EC) No. 2012/2002 in order to provide financial assistance to Member States and to countries negotiating their accession to the Union that are seriously affected by a major public health; Regulation 2020/493 of 30 March 2020 on the False and Authentic Documents Online (FADO) system and repealing Council Joint Action 98/700/JHA; Regulation 2020/741 of 25 May 2020 on minimum requirements for water reuse. There were also various regulations regarding COVID-19 adopted: Regulation 2020/1042 of 15 July 2020 laying down temporary measures concerning the time limits for the collection, the verification

and the examination stages provided for in Regulation (EU) 2019/788 on the European citizens' initiative in view of the COVID-19 outbreak; Regulation 2020/1043 of 15 July 2020 on the conduct of clinical trials with and supply of medicinal products for human use containing or consisting of genetically modified organisms intended to treat or prevent coronavirus disease (COVID-19); Regulation 2020/698 of 25 May 2020 laying down specific and temporary measures in view of the COVID-19 outbreak concerning the renewal or extension of certain certificates, licences and authorisations and the postponement of certain periodic checks and periodic training in certain areas of transport legislation; Regulation 2020/2221 of 23 December 2020 amending Regulation (EU) No. 1303/2013 as regards additional resources and implementing arrangements to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and its social consequences and for preparing a green, digital and resilient recovery of the economy (REACT-EU); Regulation 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis; Regulation 2020/2180 of 18 December 2020 extending the reference period of Regulation (EU) 2020/1429 of the European Parliament and of the Council establishing measures for a sustainable rail market in view of the COVID-19 outbreak; Regulation 2020/559 of 23 April 2020 amending Regulation (EU) No. 223/2014 as regards the introduction of specific measures for addressing the outbreak of COVID-19; Regulation 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak.

Furthermore, some decisions were adopted that are particularly relevant: Decision 2020/1502 of 15 October 2020 laying down internal rules concerning the provision of information to data subjects and the restriction of certain of their rights in the context of the processing of personal data by the Commission in the cooperation mechanism established by Regulation (EU) 2019/452 of the European Parliament and of the Council; Decision 2020/969 of 3 July 2020 laying down implementing rules concerning the Data Protection Officer, restrictions of data subjects' rights and the application of Regulation (EU) 2018/1725 of the European Parliament and of the Council, and repealing Commission Decision 2008/597/EC; Decision 2020/C 163/03 of 11 May 2020 establishing the Fit for Future Platform to assess the efficiency of EU law, considering the efficiency of Union legislation, also addressing legislative density. It should look for evidence on additional burdens coming from the implementation of Union legislation in Member States, to the extent possible. Decision 2020/519 of 3 April 2020 on the sectoral reference document on best environmental management practices, sector environmental performance indicators and benchmarks of excellence for the waste management sector under Regulation (EC) No. 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

Concerning Communications adopted by the Commission in 2020: on the review of the European Union under the Implementation Review Mechanism of the United Nation Conventions against Corruption (UNCAC) (COM/2020/793 of 14 December 2020); on the European Climate Pact (COM/2020/788 of 9 December 2020); on the First Progress Report on the EU Security Union Strategy (COM/2020/797 of 9 December 2020); on the Progress Report on the Implementation of the European Agenda on Migration (COM/2019/481 of 16 October 2019); on the European democracy action plan (COM/2020/790 of 3 December 2020); on the Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond: the nineteenth progress towards an effective and genuine Security Union (COM/2020/795 of 9 December 2020); on the Digitalisa-

tion of justice in the European Union: A toolbox of opportunities (COM/2020/710 of 2 December 2020); on the Strategy to strengthen the application of the Charter of Fundamental Rights in the EU (COM/2020/711 of 2 December 2020); on Staying safe from COVID-19 during winter (COM/2020/786 of 2 December 2020); on Ensuring justice in the EU — a European judicial training strategy for 2021-2024 (COM/2020/713 of 2 December 2020); on the Action Plan on Integration and Inclusion 2021-2027 (COM/2020/758 of 24 November 2020); on the Union of Equality: LGBTIQ Equality Strategy 2020-2025 (COM/2020/698 of 12 November 2020); on building a European Health Union: Reinforcing the EU's resilience for cross-border health threats (COM/2020/724 of 11 November 2020); on Improving access to justice in environmental matters in the EU and its Member States (COM/2020/643 of 14 October 2020); on A Union of Equality: EU Rome strategic framework for equality, inclusion and participation (COM/2020/620 of 7 October 2020); on the Digital Education Action Plan 2021-2027 Resetting education and training for the digital age (COM/2020/624 of 30 September 2020); on achieving the European Education Area by 2025 (COM/2020/625 of 30 September 2020); on the 2020 Rule of Law Report: The rule of law situation in the European Union (COM/2020/580 of 30 September 2020); on a New Pact on Migration and Asylum (COM/2020/609 of 23 September 2020); on A Union of equality: EU anti-racism action plan 2020-2025 (COM/2020/565 of 18 September 2020); on the EU Security Union Strategy (COM/2020/605 of 24 July 2020); on the EU strategy for a more effective fight against child sexual abuse (COM/2020/607 of 24 July 2020); on Youth Employment Support: a Bridge to Jobs for the Next Generation (COM/2020/276 of 1 July 2020); on the EU Strategy on victims' rights (2020-2025) (COM/2020/258 of 24 June 2020); on A Union of Equality: Gender Equality Strategy 2020-2025 (COM/2020/152 of 5 March 2020).

From the adoption of l. 24 December 2012, No. 234, the adaptation of the Italian legal system in line with the European system is achieved through two legislative instruments: the European Law and the Law of European delegation. While the former contains regulations for the direct implementation of EU law aimed at remedying cases of incorrect transposition of EU legislation, the latter contains the delegation provisions required for the transposition of directives and other Union acts.

On 20 April 2021, the Senate approved the European Delegation Law 2019-2020, after being approved, with amendments, by the Chamber of Deputies on 31 March 2021 and by the Council of Ministers on 23 January 2020. The law foresees the implementation of 39 European directives into Italian Law (6 more than the bills approved by the Council of Ministers), including: Directive 2018/1673 of 23 October 2018 on combating money laundering by criminal law; Directive 2019/633 of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain; Directive 2019/713 of 17 April 2019, on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA; Directive 2019/789 of 17 April 2019, laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC; Directive 2019/790 of 17 April 2019, on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC; Directive 2019/884 of 17 April 2019 amending Council Framework Decision 2009/315/

JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA; Directive 2019/904 of 5 June 2019, on the reduction of the impact of certain plastic products on the environment; Directive 2019/1152 of 20 June 2019, on transparent and predictable working conditions in the European Union; Directive 2019/1153 of 20 June 2019, laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA; Directive 2019/1158 of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU; Directive 2019/1937 of 23 October 2019, on the protection of persons who report breaches of Union law; Directive 2016/343 of 9 March 2016, on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.

On 1 April 2021, the Chamber of Deputies approved and transmitted bill No. 2670 to the Senate, containing the provisions for the amendments to Italy's duties as a member of the European Union (European Law 2019-2020).

The bill foresees that Italy will face ten infringement procedures, one EU-Pilot case (a situation that may precede an infraction), one ARES case, the implementation of ten regulations, five directives that had already been transposed into Italian Law, and one preliminary ruling of the EU Court of Justice and the reception of the rectification of a directive.

Regarding some infringement procedures that were referred to the EU Court of Justice (CJEU) by the Commission in the past few years, pursuant to art. 258 TFEU and on which the CJEU opened its investigation, these concerned (limited to the issues covered by this Yearbook): infringement 2019/2100 on social security benefits for third-country nationals holding some types of residence permit to work, study or do research; infringements 2018/2175 and 2018/2295 on the recognition of professional qualifications; infringements 2020/0211 and 2020/0212 regarding the technical specifications related to warning or signalling weapons in accordance with Council Directive 91/477/EEC on control of the acquisition and possession of weapons. In the ARES S(2019)1602365 case, the European Commission requested information from Italy regarding specific questions on the transposition of Directive 2014/54/EU on facilitating the exercise of rights in the context of free movement of workers, Italy intends to resolve the case via the implementation of Directive 2014/54/EU.

With regard to the adaption of national law to European regulations, the following are relevant to the area of fundamental rights: Regulation No. 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom; Regulation No. 810/2009 relating to extension to short-term visas; Regulation No. 2016/1953 on the establishment of a European travel document for the return of illegally staying third-country nationals.

To address the preliminary ruling of the EU Court of Justice in joined cases C-297/17, C318/17 and C-319/17, Italy intends to amend art. 29 of legisla-

tive decree No. 25 of 2008, on the cases of Rejection by the authorities of a Member State of an application for asylum as being inadmissible because of the prior granting of subsidiary protection in another Member State.

Italian Law*

I Constitution of the Italian Republic

"The Republic recognises and guarantees the inviolable rights of the persons, both as an individual and in the social group where the human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled" (art. 2).

"All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.

"It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the Country" (art. 3).

"The Italian legal system conforms to the generally recognised principles of international law. The legal status of foreigners is regulated by law in conformity with international provisions and treaties. A foreigner who, in his home Country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian Constitution shall be entitled to the right of asylum under the conditions established by law. A foreigner may not be extradited for a political offence" (art. 10).

"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 the Nations. Italy promotes and encourages international organisations furthering such ends" (art. 11).

The whole of Fundamental Principles and Part I of the Constitution (articles 1-54) is devoted to the fundamental rights and duties of citizens, which are grouped into four areas: civil relations, ethical and social relations, economic relations and political relations.

II National Legislation

In 2020, the Parliament and the Government adopted a total of 183 legislative acts (laws, decree-laws, legislative decrees) that are directly and indirectly related to the protection of internationally recognised human rights. Below

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the legislative acts are listed on the basis of the following typologies, based on this *Yearbook*'s categorisation of human rights instruments:

a) general human rights legislative acts;

b) legislative acts concerning specific human rights subjects;

c) legislative acts concerning the protection of human rights of particular groups.

A General Human Rights Legislative Acts

L. 18 December 2020, No. 173 (Conversion into law, with amendments, of law-decree 21 October 2020, No. 130, on urgent measures for immigration, international and subsidiary protection, amending articles 131-*bis*, 391-*bis*, 391-*ter* and 588 of the Criminal Code, as well as measures on the ban on access to public establishments and to public entertainment venues, on combatting abusive use of the internet and on regulations regarding the National Ombudsperson on the rights of persons deprived of their personal liberty).

L. 1 October 2020, No. 133 (Ratifying and implementing of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, made in Faro on 27 October 2005).

L. 5 June 2020, No. 63 (Ratifying and implementing the Agreement between the Government of the Italian Republic and the Parliamentary Assembly of the Union for the Mediterranean concerning the Premises of the Permanent Secretariat located in Italy, with appendices, made in Brussels on 6 February 2019 and in Rome on 9 February 2019).

Lgs.d. 6 February 2020, No. 4 (Integrative and corrective provisions for legislative decree 2 January 2018, No. 1, concerning: «Civil Protection Code»).

B Legislative Acts concerning Specific Human Rights Subjects

Crime, criminal procedure, judicial system

L.d. 31 December 2020, No. 183 (Urgent provisions on legislative terms, on developing digital services, on executing Council Decision (EU, EURATOM) 2020/2053 of 14 December 2020, as well as on the withdrawal of the United Kingdom from the European Union).

D. Ministry of the Interior 7 August 2020, No. 174 (Regulation on the hiring of whistle-blowers in public administration, pursuant to art. 7, para. 1, letter h), of law 11 January 2018, No. 6).

L.d. 26 October 2020, No. 152 (Aligning national law to the provisions of Regulation (EU) No. 655 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters).

L.d. 30 July 2020, No. 100 (Implementing Directive (EU) 2018/822 of the Council, of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements).

L. 25 June 2020, No. 70 (Conversion into law, with amendments, of law-decree 30 April 2020, No. 28, on urgent measures on the function of interception systems of

communication and conversation, further measures on the Prison Administration Act, as well as integrative and coordination measures on administrative, civil and accounting justice and urgent measures for the introduction of a COVID-19 warning system).

L.d. 14 July 2020, No. 75 (Implementing Directive (EU) 2017/1371, on the fight against fraud to the Union's financial interests by means of criminal law).

D. Ministry of Justice 3 March 2020, No. 61 (Regulation on determining the way of allocating confiscated sums, goods and utilities to the International Criminal Court).

Environment

L.d. 3 September 2020, No. 121 (Implementing Directive (EU) 2018/850, amending Directive 1999/31/EC on waste disposal).

L.d. 3 September 2020, No. 118 (Implementing articles 2 and 3 of Directive (EU) 2018/849, amending Directives 2006/66/EC on batteries and accumulators and waste batteries and accumulators and 2012/19/EU on the disposal of electronic and electrical equipment).

L.d. 30 July 2020, No. 102 (Integrative and corrective provisions legislative decree 15 November 2017, No. 183, implementing Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants, as well as on reorganising the legal framework on plants that produce emissions into the atmosphere, pursuant to art. 17 of law 12 August 2016, No. 170).

L.d. 31 July 2020, No. 101 (Implementing Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom and reorganising sector laws in implementing art. 20, para. 1, letter a), of law 4 October 2019, No. 117).

L.d. 30 July 2020, No. 99 (Sanction regulations for the violation of provisions of Regulation (EU) No. 1257/2013 on ship recycling, amending Regulation (EC) No. 1013/2006 and Directive 2009/16/EC).

L. 23 July 2020, No. 97 (Ratifying and implementing the following protocols: a) Protocol to Amend the Convention on Third Party Liability in the Field of Nuclear Energy, as amended by the Additional Protocol of 28 January 1964 and by Protocol of 16 November 1982, made in Paris on 12 February 2004; b) Protocol to amend the Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, as amended by the additional Protocol 28 January 1964 and by Protocol of 16 November 1982, made in Paris on 12 February 2004, as well as standards of aligning standards of Italian law).

L. 17 July 2020, No. 91 (Ratifying and implementing the Protocol on Pollutant Release and Transfer Registers, made in Kyiv on 21 May 2003).

Sport

L. 17 July 2020, No. 94 (Ratifying and implementing on the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events, made in Saint-Denis on 3 July 2016).

Scientific Research

L.d. 26 October 2020, No. 153 (Sanction regulations for the violation of provisions for Regulation (EU) No. 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union Text).

L. 10 February 2020, No. 10 (Regulations on donating one's body and tissue to medical study, training or scientific research post-mortem).

Work

L.d. 1 June 2020, No. 44 (Implementing Directive (EU) 2017/2398 of the European Parliament and of the Council of 12 December 2017 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work.

COVID-19

L. 27 November 2020, No. 159 (Conversion into law, with amendments, of law-decree 7 October 2020, No. 125, on urgent measures regarding the extension of the declaration of a state of emergency regarding the COVID-19 pandemic and for the continuation of the COVID warning system, as well as implementing Directive (EU) 2020/739 of 3 June 2020).

L.d. 2 December 2020, No. 158 (Urgent provisions to tackle health risks related to the spread of the COVID-19 virus).

L.d. 30 November 2020, No. 157 (Further urgent measures on the emergency COVID-19 pandemic).

L. 13 November 2020, No. 155 (Establishing a National Day for healthcare workers, social assistants and volunteers).

L.d. 23 November 2020, No. 154 (Urgent financial measures for the emergency COVID-19 pandemic).

L.d. 9 November 2020, No. 149 (Further urgent measures on the protection of health, support for workers and businesses, and justice in light of the COVID-19 pandemic).

L. 25 September 2020, No. 124 (Conversion into law, with amendments, of law-decree 30 July 2020, No. 83, on the urgent measures regarding the end of the declaration of the emergency COVID-19 pandemic deliberated on 31 January 2020).

L.d. 28 October 2020, No. 137 (Further urgent measures on the protection of health, support for workers and businesses, and justice in light of the COVID-19 pandemic).

L. 13 October 2020, No. 126 (Conversion into law, with amendments, of law-decree 14 August 2020, No. 104, on urgent measures to support and relaunch the economy).

L.d. 8 September 2020, No. 111 (Urgent provisions to tackle undeferrable financial needs and supporting the start of the school year, in relation to the emergency COVID-19 pandemic).

L. 2 July 2020, No. 72 (Conversion into law, with amendments, of law-decree 10 May 2020, No. 30, on urgent measures for the study of epidemiology and statistics regarding SARS-COV-2).

L. 14 July 2020, No. 74 (Conversion into law, with amendments, of law-decree 16 May 2020, No. 33, on further urgent measures to tackle the emergency COVID-19 pandemic).

L. 17 July 2020, No. 77 (Conversion into law, with amendments, of law-decree 19 May 2020, No. 34, on urgent measures on health, support for employment and the economy, and social policies related to the emergency COVID-19 pandemic).

L. 22 May 2020, No. 35 (Conversion into law, with amendments, of law-decree 25 March 2020, No. 19, on urgent measures to tackle the emergency COVID-19 pandemic).

L. 24 April 2020, No. 27 (Conversion into law, with amendments, of law-decree 17 March 2020, No. 18, on measures to strengthen the National Health Service and to support families, workers and businesses in light of the emergency COVID pandemic. Extending the terms for adopting legislative decrees).

L. 5 March 2020, No. 13 (Conversion into law, with amendments, of law-decree 23 February 2020, No. 6, on urgent measures for containing and managing the emergency COVID-19 pandemic).

C Legislative acts concerning the protection of the human rights of particular groups

Minors

L. 29 July 2020, No. 107 (Establishing a Parliamentary Enquiry Commission on family communities that host minors. Provisions on the rights of the minor to a family).

D.p.c.m. – Department of Family Policy 15 April 2020, No. 62 (Regulation amending decree 30 October 2007, No. 240, on coordinating child protection initiatives against sexual exploitation and abuse and establishing an Observatory for combatting paedophilia and child pornography).

Victims of crime

D. Ministry of Economy and Finance 21 May 2020, No. 71 (Regulations on implementing support measures to orphans of domestic and gender-based violence, and to foster families).

Gender equality

L. 7 August 2020, No. 98 (Conversion into law of law-decree 3l July 2020, No. 86, on urgent provisions for gender equality in ordinary Statute regional elections).

III Municipal, Provincial and Regional Statutes

The so-called "peace human rights" norm has been included in the statutes of numerous Italian Municipalities, Provinces and Regions since 1991. Its inclusion followed the adoption of l. June 8, 1990, No. 142 (Arrangement of local autonomies), and was originally contained in art. 1 of the Veneto Regional Law of 30 March 1988, No. 18 (now updated by r.l. Veneto 21/2018) on "Regional interventions for the promotion of a culture of peace".

The standard text reads:

"The Municipality ... (the Province ... the Region ...), in accordance with constitutional principles and international norms that recognise the innate rights of human persons,

sanction the rejection of war as a means of resolving international disputes and promote cooperation between the peoples, peacefully recognises a fundamental right of the person and of the peoples.

For this reason, the Municipality ... (the Province ... the Region ...) promotes the culture of peace and human rights through cultural initiatives and research, education, cooperation and information that tend to transform the City into a land of peace.

The Municipality ... (the Province ... the Region ...) will take direct initiatives and will favour those of cultural and scholastic institutions, associations, voluntary groups and international cooperation".

There are also numerous statutes of local and regional authorities that contain a specific reference to international human rights norms and principles, in particular: the UN Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Social and Cultural Economic Rights, the International Convention on the Rights of the Child, and the Charter of Fundamental Rights of the EU (see *Yearbook 2011*, pp. 65-69).

In 2020, no changes were made to the regional statutes with reference to the "peace human rights" norm. There are 15 Italian Regions that contain this standard within its statutory law in its standard formulation or in alternative formulations (Abruzzo, Apulia, Basilicata, Calabria, Campania, Emilia-Romagna, Lazio, Liguria, Lombardy, Marche, Molise, Piedmont, Tuscany, Umbria and Veneto). Most of these statutes refer to the Universal Declaration of Human Rights and other international human rights instruments.

IV Regional Laws

This section lists the laws on: human rights, equal opportunities, development cooperation, fair trade, immigration, Ombudspersons and the protection of children's rights, the rights of persons deprived of their liberty, minorities' rights, workers' rights, the rights of persons with disabilities, solidarity, social advancement, family assistance, citizenship and legality education, and the fight against bullying adopted by the Councils of the Italian Regions and Autonomous Provinces in 2020. Since many of the thematic areas identified in the following pages (in particular, workers' rights, promoting solidarity and family assistance) overlap in scope with the numerous regional and provincial laws on alleviating the social and economic consequences of the COVID-19 pandemic, these latter have been archived into one dedicated section. The laws are divided according to topics and listed for each authority in chronological order. If the subject of the act spans more than one category, the categories will be briefly listed beside it.

Peace, human rights, development cooperation, fair trade

R.l. Lazio 12 August 2020, No. 12 (Recognising Ventotene as a memorial site and as an ideal reference for the protection of common values inspired by the process of European integration).

R.l. Piedmont 26 February 2020, No. 4 (Establishing a Regional Committee for human and civil rights and a Regional Day of Peace).

Equal opportunities, gender

R.l. Calabria 19 November 2020, No. 17 (Regulations on representation and double gender preferences. Amending and integrating regional law 7 February 2005, No. 1 (Regulations for the election of the President of the Regional Government and Regional Council)).

Ombudspersons, children's Ombudspersons, National Guarantors

R.l. Liguria 1 June 2020, No. 10 (Establishing an Ombudsperson for the rights of persons subject to restrictions on their personal freedom).

R.l. Liguria 1 June 2020, No. 11 (Establishing a Regional Ombudsperson for the protection of victims of crime).

R.l. Marche 10 June 2020, No. 21 (Amending r.l. 28 July 2008, No. 23 (Regional ombudspersons for the rights of the person).

P.l. Trento 18 November 2020, No. 12 (Amending p.l. on National Guarantors 1982 and p.l. 16 December 2005, No. 19 (Regulations for a provincial Committee on Communications)).

Persons with disabilities

R.l. Apulia 7 July 2020, No. 15 (Regional interventions to encourage autonomy and an independent and high-quality life for persons with disabilities, both with and without family support, in Apulia).

R.l. Lombardy 9 June 2020, No. 14 (Amendments to regional law 20 February 1989, No. 6 (Rules for the elimination of architectural barriers and technical prescriptions concerning their implementation)).

R.l. Marche 3 August 2020, No. 37 (Access of wheelchair users to hiking trails).

R.l. Veneto 14 February 2020, No. 9 (Amending art. 8 of regional law 3 August 2001, No. 16 (Regulations for the right to work for persons with disabilities in the implementation of law March 1999, No. 68 and establishing a work integration service within the local health authorities (ULSS)) and successive amendments).

R.l. Veneto 27 July 2020, No. 31 (Amending regional law 3 August 2001, No. 16 (Regulations for the right to work for persons with disabilities in the implementation of law 12 March 1999, No. 68 and establishing a work integration service within the local health authorities (ULSS))).

Workers' rights

R.l. Apulia 20 August 2020, No. 28 (Promoting a regional multi-lateral and complementary circuit for compensation implementing a model of fair economy within the enterprise system).

R.l. Friuli-Venezia Giulia 15 October 2020, No. 17 (Regional provisions on work. Amending regional law 9 August 2005, No. 18 (Regional regulations for employment, job safety and work quality) and regional law 21 July 2017, No. 27 (Regulations for training and guidance for apprenticeships)).

R.l. Liguria 6 February 2020, No. 2 (Regional initiatives to improve worker safety on motorways.

R.l. Marche 3 August 2020, No. 38 (Guidelines for the writing of regional policy on social inclusion, support for work and the fight against poverty).

R.l. Veneto 14 February 2020, No. 9 – see above, *Persons with disabilities*

R.l. Veneto 27 July 2020, No. 31 – see above, *Persons with disabilities*

Solidarity, social promotion, family assistance

R.l. Abruzzo 11 August 2020, No. 26 (Provisions for diagnosing, treating and recognising the social importance and for preventing complications of endometriosis).

R.l. Abruzzo 7 December 2020, No. 37 (Interventions for preventing and treating addition and other provisions).

R.l. Apulia 27 February 2020, No. 3 (Norms supporting family caregivers).

R.l. Apulia 7 July 2020, No. 14 (Regional measures supporting adolescents).

R.l. Apulia 20 August 2020, No. 28 – see above, *Workers' rights*

R.l. Basilicata 17 February 2020, No. 7 (Amending R.l. No. 30 of 27 October 2014 concerning: measures to combat gambling addiction).

R.l. Basilicata 17 February 2020, No. 8 (Assistance for the elderly in residential structures).

R.l. Basilicata 4 June 2020, No. 15 (Intervention to promote and enhancement of support services for vulnerable persons, implemented by law 9 January 2004, No. 6).

R.l. Friuli-Venezia Giulia 15 October 2020, No. 18 (Amending r.l. 14 November 2014, No. 22 (Promoting active aging and amending art. 9 of regional law 15/2014 (on social protection)), concerning activities to prevent loneliness).

R.l. Lazio 7 August 2020, No. 8 (Amending r.l. 26 February 2014, No. 2 (Regional integrated system on civil protection. Establishing a regional civil protection agency) and successive amendments).

R.l. Lombardy 21 May 2020, No. 12 (Amending r.l. 28 February 2005, No. 9 (New regulations for the Voluntary Environmental Monitoring Service)).

R.l. Lombardy 14 December 2020, No. 23 (New intervention system on addiction).

R.l. Marche 13 May 2020, No. 18 (Urgent amendments to r.l. 23 February 2005, No. 15 (Establishing a regional Civil Service system)).

R.l. Marche 3 August 2020, No. 38 – see above, *Workers' rights*

R.l. Marche 3 August 2020, No. 40 (Provisions on the assumption of responsibility of persons with eating disorders).

R.l. Molise 5 June 2020, No. 6 (Contributing to the support of cancer patients undergoing chemotherapy)

R.l. Molise 16 November 2020, No. 13 (Establishing a Regional Family Council).

R.l. Piedmont 17 April 2020, No. 9 (Amending regional law 14 April 2003, No. 7 (Provisions on civil protection)).

R.l. Tuscany 20 February 2020, No. 13 (Regional Council interventions supporting volunteering organisations carrying out initiatives to relieve paediatric patients in Health and Medical Structures in Tuscany).

R.l. Tuscany 9 June 2020, No. 36 (Interventions to support initiatives to relieve paediatric patients in Health and Medical Structures in Tuscany. Amending r.l. 13/2020).

R.l. Tuscany 3 March 2020, No. 17 (Provisions to encourage cohesion and social solidarity through corresponding social actions).

R.l. Tuscany 25 June 2020, No. 45 (Regional Civil Protection System and management of their associated activities).

R.l. Tuscany 29 June 2020, No. 48 (Provisions for facilities subject to authorisation and family policies. Amending r.l. 41/2005).

R.l. Tuscany 6 August 2020, No. 81 (Promoting regional youth policies).

R.l. Tuscany 22 July 2020, No. 65 (Regulations to support and promote third sector institutions in Tuscany).

R.l. Tuscany 24 July 2020, No. 71 (Collaborative governing of common goods and territory, to promote social subsidiarity in implementing articles 4, 58 and 59 of the Statute).

P.l. Trento 12 February 2020, No. 1 (Interventions supporting separated or divorced couple facing difficult situations).

R.l. Veneto 28 May 2020, No. 20 (Interventions supporting families and family planning).

Education for citizenship and legality, fight against bullying

R.l. Lazio 12 August 2020, No. 10 (Establishing a Remembrance Day for Police officers who gave their lives in the line of duty, in terrorist and mafia attacks, and in any other criminal activity. Amending regional law 18 February 2002, No. 6 (Regulations on the organisational system of the Council and administration and provisions on leadership and staff within the region) and art. 81 of regional law 22 October 2018, No. 7, related to the special commission on local plans for economic and social building and successive amendments).

R.l. Marche 10 June 2020, No. 23 (Intervention to promote the teaching of Global Citizenship and a culture of sustainability).

R.l. Veneto 20 May 2020, No. 18 (Regulations of recognising and supporting the educational and social role of the Municipal Youth Council as an institutional tool to increase the participation of younger generations in political and administrative life).

COVID-19

R.l. Abruzzo 6 April 2020, No. 9 (Urgent and extraordinary measures for the economy and employment related to the emergency COVID-19 pandemic).

R.l. Abruzzo 3 June 2020, No. 10 (Urgent provisions in support of tourism, retail trade and other services to tackle the effects of the serious economic crisis following the emergency COVID-19 pandemic).

R.l. Abruzzo 9 July 2020, No. 16 (Amending regional law 6 April 2020, No. 9 (Urgent and extraordinary measures for the economy and employment relating to the emergency COVID-19 pandemic) implementing the principle of sincere cooperation and other provisions).

R.l. Abruzzo 20 November 2020, No. 32 (Provisions pursuant to art. 109, para. 2-*bis*, lett. B, l.d. 18/2020 and subsequent amendments and additions, for interventions on the relaunch of productive activities and tourism post-COVID in the region and other provisions).

R.l. Aosta Valley 25 March 2020, No. 4 (First urgent regional support measures for families, workers and businesses relating to the emergency COVID-19 pandemic).

R.l. Aosta Valley 21 April 2020, No. 5 (Further urgent regional support measures for families, workers and businesses relating to the emergency COVID-19 pandemic).

R.l. Aosta Valley 25 May 2020, No. 6 (Amending regional law 21 April 2020, No. 5 (Further urgent regional support measures for families, workers and businesses relating to the emergency COVID-19 pandemic)).

R.l. Aosta Valley 13 July 2020, No. 8 (Adjusting the Aosta Valley regional budget of forecast for 2020 and urgent measures to tackle the effects of the emergency COVID-19 pandemic).

R.l. Apulia 15 May 2020, No. 12 (Extraordinary measures to tackle the socio-economic consequences of the COVID-19 pandemic).

R.l. Apulia 22 December 2020, No. 33 (Ratifying, pursuant to art. 109, para. 2-bis, of law decree 17 March 2020, No. 18 (Measures to strengthen the Regional Health Service and economic support for families, workers and businesses relating to the emergency COVID-19 pandemic), converting, with amendments by law 24 April 2020 No. 27, the budget changes adopted urgently by the Regional Council via deliberation of 30 November 2020, No. 1928).

R.l. Emilia-Romagna 29 May 2020, No. 1 (Urgent measures to relaunch economic and social activities following the COVID-19 emergency. Amending regional laws No. 3 of 1999, No. 40 of 2002, No. 11 of 2017 and No. 13 of 2019).

R.l. Friuli-Venezia Giulia 18 May 2020, No. 8 (Urgent measures to tackle the emergency COVID-19 pandemic regarding the maritime and waters domain).

R.l. Friuli-Venezia Giulia 12 March 2020, No. 3 (First urgent measures to tackle the emergency COVID-19 pandemic).

R.l. Friuli-Venezia Giulia 1 April 202, No. 5 (Further urgent measures to tackle the emergency COVID-19 pandemic).

R.l. Friuli-Venezia Giulia 12 May 2020, No. 6 (Urgent technical-financial measures to tackle the emergency COVID-19 pandemic, urgent regulations on linguistic minorities and individuals coming from the same region living abroad, and on recognising off-balance-sheet debt).

R.l. Marche 7 April 2020, No. 12 (Urgent provisions on the emergency COVID-19 pandemic and the recognition of off-balance-sheet debt).

R.l. Marche 10 April 2020, No. 13 (Urgent measures to support production and autonomous work following the emergency COVID-19 pandemic).

R.l. Marche 3 June 2020, No. 20 (Extraordinary and urgent measures for recovery in the Marche region following the emergency COVID-19 pandemic).

R.l. Marche 5 August 2020, No. 46 (General variation to the forecast budget 2020/2022 pursuant to para. 1 of art. 51 of legislative decree 23 June 2011, No. 118 – (1st Provision) and amending regional law 3 June 2020, No. 20 (Extraordinary and urgent measures for recovery in the Marche region following the emergency COVID-19 pandemic)).

R.l. Marche 24 November 2020, No. 47 (Further financial support to micro and small businesses. Amending regional law 10 April 2020, No. 13 (Urgent measures to support production and autonomous work following the emergency COVID-19 pandemic)).

R.l. Piedmont 15 May 2020, No. 12 (First support interventions to tackle the emergency COVID-19 pandemic).

R.l. Piedmont 29 May 2020, No. 13 (Financial support and simplifying interventions to tackle the emergency COVID-19 pandemic).

R.l. Piedmont 30 June 2020, No. 14 (Measures on trade in light of the emergency COVID-19 pandemic).

R.l. Piedmont 1 October 2020, No. 22 (Amending regional law 15 May 2020, No. 12 (First support interventions to tackle the emergency COVID-19 pandemic) and regional law 29 May 2020, No. 13 (Financial support and simplifying interventions to tackle the emergency COVID-19 pandemic)).

P.l. Trento 23 March 2020, No. 2 (Urgent support measures for families, workers and economic sectors related to the emergency COVID-19 pandemic and other provisions).

P.l. Trento 13 May 2020, No. 3 (Further support measures for families, workers and economic sectors related to the emergency COVID-19 pandemic and the consequent variation to the forecast budget of the Autonomous Province of Trento for the financial years 2020 - 2022).

R.l. Tuscany 20 April 2020, No. 24 (Economic support measures for regional healthcare workers managing the emergency COVID-19 pandemic).

R.l. Tuscany 29 May 2020, No. 31 (Extending the reference period of urban and territorial planning to curb the negative effects of the emergency COVID-19 pandemic).

R.l. Tuscany 22 June 2020, No. 41 (COVID-19 emergency. Establishing a special regional fund for the Local Public Transport (TPL) "COVID-19 TPL fund". Provisions for paying contributions relating to mining activities pursuant to r.l. 35/2015).

R.l. Tuscany 4 August 2020, No. 77 (Urgent provisions on reimbursements for work carried out by regional councillors during the period of emergency COVID-19 pandemic).

R.l. Tuscany 5 August 2020, No. 78 (Provisions to carry out experimental building work for social housing following emergency COVID-19 pandemic).

R.l. Tuscany 27 November 2020, No. 93 (Legal interventions concerning the third change to the financial budget of forecast 2020 – 2022. Amending r.l. 73/2005 and r.l. 19/2019).

PART II – THE HUMAN RIGHTS INFRASTRUCTURE IN ITALY

National Bodies with Jurisdiction over Human Rights*

International human rights law requires States to set up structures that are adequately specialised in promoting and protecting fundamental rights. In this regard, a distinction shall be made between strictly governmental bodies and independent structures directly emanating from civil society. The latter in particular, through different channels from those classically used by governmental powers, aims to participate in policymaking and to promote and develop a human rights culture, as well as to prevent violations.

In this Part, the composition, mandate and activities of the following institutions will be illustrated:

- *Parliamentary Bodies*: The Special Commission for the Promotion and Protection of Human Rights of the Italian Senate; the Permanent Committee on Human Rights instituted within the Foreign Affairs Commission (III) of the Italian Chamber of Deputies; and the Parliamentary Commission for Children and Adolescents.
- *Governmental bodies*: Bodies established within the Prime Minister's Office: Department for Equal Opportunities; Commission for International Adoptions; National Committee on Bioethics. Bodies established within the Ministry of Foreign Affairs: Inter-Ministerial Committee for Human Rights; National Commission for UNESCO. Bodies established within the Ministry of Labour and Social Policy: National Observatory for Children and Adolescents; National Observatory Monitoring the Condition of Persons with Disabilities; and other departments and bureaus of the Ministry of Justice which work specifically on human rights matters.
- *The Constitutional Court*
- *Judicial Authorities*: The Court of Cassation, acting as the supreme judge of legitimacy.
- *Independent Authorities*: The Communications Regulatory Authority; the Data Protection Authority; the Committee Guaranteeing the Implementation of the Law on Strikes Affecting Essential Public Services; the National Ombudsperson for Children and Adolescents; and the National Ombudsperson for the Rights of Persons in Prison or Deprived of Liberty

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Italy's national human rights infrastructure is completed by academic institutions promoting not only research, but also education and training in human rights issues, and by several non-governmental organisations, some of which work across a network.

I Parliamentary Bodies

A Senate of the Republic: Special Commission for the Protection and Promotion of Human Rights

The Senate's Special Commission for the Protection and Promotion of Human Rights was first set up during the 14th legislature (motion 20, 1 August 2001) and is the fruit of long-term experience by the Committee against Capital Punishment (1996–2001). Since the Commission is not permanent, it must be formally established at the beginning of each legislature and the Senate did so during the 15th legislature (motion 20, 12 July 2006), the 16th legislature (motion 13, 26 June 2008) and the 17th legislature (motion 7, 26 March 2013). In the latter motion, the Senate decided to commence the proceedings for the establishment of a permanent human rights commission.

The Commission has the task of studying, observing, and taking initiatives on issues concerning the protection and promotion of internationally recognised human rights. To this end, it can establish relations with institutions of other countries and with international bodies; carry out missions in or outside Italy, in particular with foreign Parliaments, in order to establish agreements fostering human rights or to facilitate other forms of collaboration; it can carry out informational procedures and formulate proposals and Assembly reports; and provide its advisory opinions on proposed legislation as well as on matters deferred to other Commissions.

The Commission is made up of 25 members, present in proportion to the size of the parliamentary groups to which they belong. Among these members, the Commission elects the bureau, made up of the Chair, two Vice Chairs and two Secretaries.

In 2020, the Commission was formed as follows: *President*: Stefania Pucciarelli; *Vice presidents*: Giorgio Fede, Paola Binetti; *Secretaries*: Orietta Vanin, Monica Cirinnà; *Members*: Emma Bonino, Marzia Casolati, Stefania Gabriella Anastasia Craxi, William De Vecchis, Elvira Lucia Evangelista (February 2020), Elena Fattori, Valeria Fedeli, Gabriella Giammanco, Barbara Guidolin, Vanna Iori, Alessandra Maiorino, Gaspare Antonio Marinello (up to February 2020), Barbara Masini, Assuntela Messina, Michela Montevecchi, Gisella Naturale (February 2020), Cesare Pianasso, Isabella Rauti, Mariarosaria Rossi, Loredana Russo, Julia Unterberger.

In 2020, the Commission held twenty hearings for the survey on the levels and mechanisms in force in Italy and internationally for the protection of human rights:

- 28 January: Paolo Bandiera, Advocacy, Legal and General Affairs Director of *Italian Multiple Sclerosis Society (AISM).*
- 18 February: Riccardo Noury, spokesperson; and Giulia Groppi, Lobbying and Policy Senior Officer; of *Amnesty International* on the Patrick Zaky case.

- 25 February: Minister Plenipotentiary Fabrizio Petri, Chair of the Interministerial Committee for Human Rights, on the UN UPR procedure.
- 19 May: Antonio Caponetto, head of the Government Action Coordination Office for People with Disabilities and their Families within the Prime Minister's Office.
- 26 May: Giusy D'Alconzo and Antonella Inverno of *Save the Children Italy* on educational poverty in the time of Coronavirus.
- 23 June: Rocco Berardo, Disabilities Initiative Coordinator; Vittorio Ceradini, Board Member Giunta; and Alessandro Gerardi, Advisor; of *Associazione Luca Coscioni* on the participation of persons with disabilities in social and civil life.
- 30 June: Marco Rasconi, President of *Unione italiana lotta alla distrofia muscolare*.
- 2 July: Alessandro Ludi, President of the *Ha.Rea Onlus* foundation; atty. Claudio Cipollini; Antonio Parisi, President of *Centro Studi Delacato*; Paolo Asti, Councillor for Tourism and International Cooperation of the Municipality of La Spezia on the rights of persons with disabilities.
- 7 July: Carlo Stasolla, President of *Associazione 21 July* on the condition of the Roma communities in both formal and informal settlements in Italy.
- 14 July: Michele Marone, Councillor of the Molise Region and Coordinator of the Social Politics Commission within the Conference of Regions and Autonomous Provinces; and Antonio Scavone, Councillor for the Family and Social Policy of the Sicily Region on the rights of persons with disabilities.
- 23 July: Maurizia Brugé, Sofia Donato and Orietta Mariotti, Representatives of the *Caregiver Familiari Comma 255* group on the rights of persons with disabilities.
- 28 July: Sila Mochi and Carolina Gianardi, Founders; and Laura Dell'Aquila, Member of the National Coordinating Committee; of *#InclusioneDonna* on the role of women in the world of work.
- 24 September: Prof. Romano Prodi on internet access as a human right.
- 15 October: Roberto Romeo, President; and Maurizio Simone, Vice President; of *A.N.G.L.A.T.* on the right to mobility of persons with disabilities.
- 22 October: Riccardo Noury, Spokesperson; and Giulia Groppi, Lobbying and Policy Senior Officer; of *Amnesty International* on the Patrick Zaky case.
- 29 October: Antonella Napoli, President of the *Italians for Darfur* association.
- 5 November: Baykar Sivazliyan, President of the *Unione degli armeni d'Italia*, on the situation in Nagorno-Karabakh.

- 19 November: Prefect Michele di Bari, Head of the Department for Civil Freedoms and Immigration of the Ministry of the Interior on the arrival of migrants in Italy.
- 23 November: José Miguel Vivanco, Executive Director - Americas Division, and Tamara Taraciuk Broner, Vice Director of *Human Rights Watch* on the situation in Venezuela.
- 17 December: Paola Pisano, Ministry for Technological Innovation and Digitalization on internet access as a human right.

Furthermore, in 2020, there were two concluding resolutions, respectively, on the examination of the matter allocated concerning the implications of the murder of Jamal Khashoggi on the plan for the protection of fundamental human rights (doc. XXIV-*ter* No. 3) and on the examination of the matter allocated concerning the right to a free and dignified life for persons with disabilities, with a specific focus on support workers and personalised rehabilitation, in light of the international treaties that Italy has signed and ratified to protect the human rights of persons with disabilities (doc. XXIV-*ter* No. 4).

B Chamber of Deputies: Permanent Committee on Human Rights

The international protection of human rights is one of the focal points of the activities performed by the Commission for Foreign and European Union Affairs (Third Commission) of the Chamber of Deputies. As from the 10th legislature (1987-1992), the Commission set up within it the Permanent Committee on Human Rights, which, especially through hearings, ensures that Parliament is kept continually informed and updated with regard to the status of international human rights. The Committee also has the task of following the course of individual human rights measures, performing preliminary tasks pertinent to the activities of the Commission. The Committee for the current legislature (18th) was set up on 5 December 2018.

In 2020, the Committee was composed of: *President*: Iolanda Di Stasio; *Vice president*: Maurizio Lupi; *Secretaries*: Erasmo Palazzotto; *Members*: Michaela Biancofiore, Simone Billi, Laura Boldrini, Mario Alejandro Borghese, Pino Cabras, Emilio Carelli, Maria Rosaria Carfagna, Edmondo Cirielli, Andrea Colletti, Vito Comencini, Sabrina De Carlo, Chiara Ehm Yana, Mirella Emiliozzi, Piero Fassino, Paolo Formentini, Lia Quartapelle Procopio, Valentino Valentini.

In 2020, as part of the fact-finding mission on Italy's commitment to promoting and protecting human rights and combatting discrimination within the international community, the Commission held the following hearings:

- 19 February: Riccardo Noury, spokesperson for *Amnesty International Italy*, Milena Santerini, national coordinator for combatting antisemitism, and Luigi Maccotta, head of the Italian Delegation at the *International Holocaust Remembrance Alliance*.
- 4 June: Yilmaz Orkan, representative of the *Kurdistan Information Office in Italy*, on the condition of Kurdish minorities in Turkey.
- 9 September: Francisak Viacorka and Andrej Stryzhak, representatives of the Civic Platform *Coordinating Group of the Opposition in Belarus*.

- 30 September: John Mpaliza Balagizi, Brigitte Kabu Dia Kivuila, Barthelemie Hemedi Nasibu and Filippo Ivardi Ganapini, human rights activists and representatives of the working group *Justice and Peace for the Democratic Republic of the Congo.*
- 1 October: Dolkun Isa, President of the *World Uyghur Congress*.
- 15 October: José Miguel Vivanco, Executive Directive of the Americas Division of *Human Rights Watch*, and Tamara Taraciuk Broner, Deputy Director of *Human Rights Watch*, on the situation in Venezuela.

C Bicameral Bodies: Parliamentary Commission for Children and Adolescents

The Parliamentary Commission for Children and Adolescents was set up by l. 23 December 1997, No. 451, although its name and responsibilities were amended by l. 3 August 2009, No. 112.

The Commission is entrusted with a supervisory and policymaking role related to the enforcement of international obligations and domestic law on children's rights. It may also present to the two Houses of Parliament observations and proposals concerning the effects and limitations of current legislation and the possible need to amend it to ensure compliance with international law concerning the rights of the child.

The Commission is composed of twenty senators and twenty representatives appointed, respectively, by the Chair of the Senate and the Chair of the Italian Chamber of Deputies, proportionately to the total number of members in the various parliamentary groups. In 2020, the Commission was composed as follows: *President*: Licia Ronzulli; *Vice president* Caterina Bini, Simone Pillon; *Secretaries*: Grazia D'Angelo, Veronica Giannone; *Members from the Chamber of Deputies*: Maria Teresa Bellucci, Rossana Boldi, Fabiola Bologna, Vittoria Casa, Laura Cavandoli, Rosa Maria Di Giorgi, Claudia Gobbato, Carmela Grippa, Anna Macina, Patrizia Marrocco, Ubaldo Pagano, Patrizia Prestipino, Michela Rostan, Rossano Sasso, Paolo Siani, Maria Spena, Gilda Sportiello, Giuseppina Versace, Leda Volpi; *Members from the Senate*: Luisa Angrisani, Stefano Bertacco, Paola Binetti, Paola Boldrini, Lello Ciampolillo, Barbara Floridia, Francesco Maria Giro, Lucio Malan, Maria Laura Mantovani, Raffaela Fiormaria Marin, Susy Matrisciano, Raffaele Mautone, Maria Saponara, Liliana Segre, Julia Unterberger.

In 2019, the Commission conducted three fact-finding surveys.

As part of the fact-finding mission on forms of violence between minors and harm to children and adolescents, the Commission conducted the following hearings:

- 16 January: Eloise Longo, sociologist and anthropologist, Department of Neuroscience of the Italian National Institute of Health (*Istituto Superiore di Sanità*).
- 5 February: prefect Vittorio Zappalorto and prefect Vittorio Rizzi.
- 12 February: Lucia Ercoli, health director of the Institute of Medicine Solidarity *(Istituto di medicina solidale*).
- 18 February: Luciana Lamorgese, Ministry for Home Affairs

- 19 February: Maria Monteleone, Acting Prosecutor of the Republic of the District Court in Rome.
- 26 February: Sergio Vincenzo Attilio Cutrona, President of the Juvenile Court of Perugia, and Maria De Luzenberger Milnernsheim, Prosecutor of the Republic at the Juvenile Court of Naples.
- 24 June: Fortunato Di Noto, founder and president of the *Associazione Meter Onlus* NGO, and Massimo Gandolfini, director of the Department of Neuroscience of the *Poliambulanza* hospital in Brescia.
- 8 July: Antonello Soro, President of the Data Protection Authority
- 15 July: Maria Rita Parsi, psychologist, paediatric psychologist and psychotherapist.
- 16 July: Luciana Delfini, lecturer at the University of Tor Vergata, and Bartolomeo Romano, lecturer at the University of Palermo.
- 21 July: Nunzia Catalfo, Ministry of Labour and Social Policies.
- 7 October: Elena Bonetti, Ministry for Equal Opportunities and the Family.
- 14 October: Roberto Speranza, Ministry of Health.

On 18 November, the Commission unanimously approved the concluding document on the inquiry into forms of violence among minors and to the detriment of children and adolescents (doc. XVII-bis, No. 4), focusing on the following issues: "baby gangs" – children and organised crime; abuse and mistreatment; sexual violence and child pornography; child prostitution and sex tourism; violence against children with disabilities. The Commission proposed various interventions to combat these issues, among which an Observatory capable of providing precise epidemiological data and prompt, early-intervention programmes (if possible, within the first thousand days of a child's life, aimed at fragile families) and able to provide new governance which unites the various Observatories and reforms competences regarding child victims of violence. Furthermore, the Commission recommends:

- developing specific training programmes for educators, teachers, doctors and paediatricians and specific health protocols to identify clinical signs of abuse and mistreatment in emergency rooms;
- educational programmes on the correct use of the internet ensuring safety and security online;
- establishing the role of school psychologist;
- combatting school dropout through specific programmes;
- updating the legal system to include specific measures to combat violence against children with disabilities and taking action on regulations on sexual offenses against minors.

Within the fact-finding inquiry on addictions in young people, the Commission carried out the following hearings:

- 3 November: Luciano Squillaci, president of the Italian Federation of Therapy Communities (FICT); Biagio Sciortino, President of the National Coordinating Body for Regional Coordinating Bodies working in the field of addiction therapy; Guido Faillace, President of the Federation of Workers of the Addiction Departments and Services.
- 25 November: Antonio Boschini, head of therapy of the *Comunità di San Patrignano*; Giampaolo Nicolasi, Director of *Comunità Incontro*; Franco Taverna, Secretary-General of *Comunità Exodus*.
- 9 December: Francesca Maisano, psychologist and psychotherapist; Leonardo Marini, medical toxicologist of the Department of Antidrug Policies of Pistoia; Giuseppe Giuntoli, medical psychiatrist and psychotherapist.

Finally, in 2020, the Commission launched a fact-finding inquiry on the function and management of social services, focusing on the emergency COVID-19 pandemic. To this end, the Commission carried out the hearing of Matteo Villanova, director of the Research Centre on the Protection and Respect of emotions during developmental age *(Osservatorio laboratorio tutela rispetto emozionale età evolutive)* at the University of Roma Tre; Bruno Spinetoli, director of the Primary Care Unit for the protection of mental health and rehabilitation during developmental age of Rome Local Health Authority 1 (ASL1); and Gianni Fulvi, president of the National Coordinating Body of Communities for Minors (*Coordinamento nazionale delle comunità per minori)* (2 December).

D Parliamentary Acts concerning Human Rights

The bills on human rights presented in Parliament are organised into twelve categories. These refer to the main legal instruments adopted by the UN on human rights, disarmament and international humanitarian and criminal law (see Part I, 1.1 and 1.2; Part III, 1.5 and 5), as well as to the Sustainable Development Goals (SDGs), adopted by the UN in 2015. To codify the bills, fifty-two descriptors were used within the classification system for parliamentary documents, TESEO (*TEsauro SEnato per l'Organizzazione dei documenti parlamentari*) as shown in the table below.

For each proposal listed below, there is indicated: the person who originally proposed or first signed the bill, its assigned code (the letter "C" if the bill was presented in the Chamber of Deputies and "S" if the bill was presented in the Senate), the name of the bill, the date of presentation and the date of its latest updates.

Category	International reference instrument	SDGs	Descriptor (TESEO)
1] Racism	International Convention on the Elimination of All Forms of Racial Discrimination	-	Racism
2] Civil and political rights	International Covenant on Civil and Political Rights	16 – Peace, Justice and Strong Institutions	Civil and political rights Freedom of Correspondence Right to housing Freedom of press Religious freedoms Protection of Privacy (personal or sensitive data, privacy, personal computer systems) Freedom of Association Freedom of Thought Freedom of Assembly Freedom of the Individual
3] Economic, social and cultural rights (including bioethics and environmental rights)	International Covenant on Economic, Social and Cultural Rights	1 – No Poverty 3 – Good Health and Well-being 4 – Quality Education 6 – Clean Water and Sanitation 8 – Decent Work and Economic Growth 10 – Reduced Inequalities 13 – Climate Action 15 – Life on Land 17 – Partnerships for the Goals	Social Security Protection of workers Freedom of teaching Protection of health Human Life

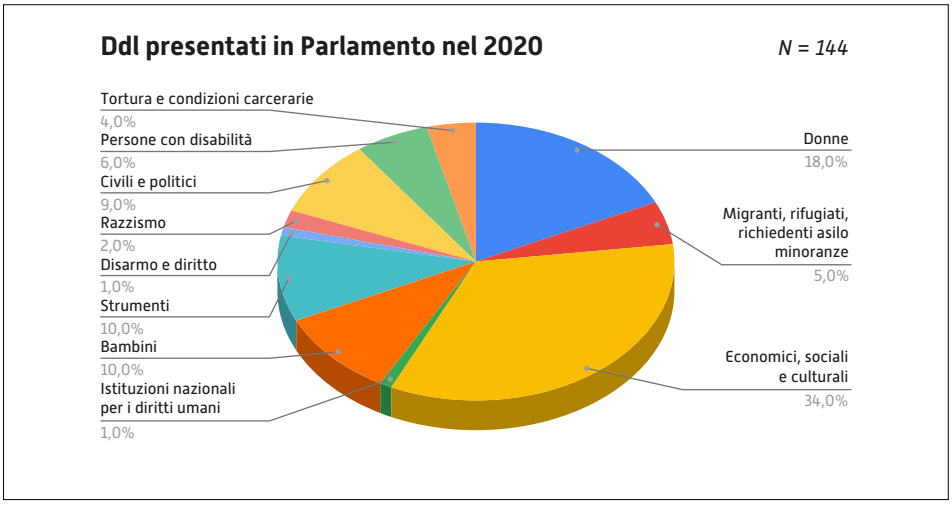
continued

4) Women's Rights	Elimination of All Forms of Discrimination against Women	5 – Gender Equality	Women Equality (discrimination, equality balance) Gender relations Equality between the sexes (equal opportunities) Sexual Offences (sexual harassment, abuse within the family, sexual violence) Violence and Threats (domestic and family violence)
5) Torture, Prison Conditions, Rights of Detained Persons	Convention against Torture	-	Prison Systems Inmates (mothers in prison) Work of inmates Mistreatment and torture (torture, mutilation) abuse
6) Children's Rights	Convention on the Rights of the Child	-	Minors Sexual Crimes (sexual harassment, abuse within the family, sexual violence, corruption of minors, exploitation and sexual abuse, paedophilia)
7) Migrants, Refugees, Asylum Seekers, Minorities	The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	-	Foreign nationals' rights Migrant workers Immigration Religious and ethnic minorities Citizenship
8) Persons with Disabilities	Convention on the Rights of Persons with Disabilities	-	People with disabilities
9) Enforced Disappearances	The International Convention for the Protection of All Persons from Enforced Disappearance	-	Political or racial persecution

continued

10) National Human Rights Institutions	A/RES/48/134 (Paris Principles)	16 – Peace, Justice and Strong Institutions	Independent supervisory and guarantee authorities
11) Ratification of International Instruments	*See Part I, 1.1 and Part III, 1.5*	-	Rights and duties of the person Non-traditional fundamental rights Traditional human rights Rights of man Crimes against fundamental rights Non-governmental organizations (NGOs) Right to self-determination of peoples Treaty ratification
11) Disarmament, international humanitarian law and criminal law	*See. Part I, 1.2 and Part III, 5*	-	Disarmament International crimes War (cyber warfare) War crimes, crimes against humanity, genocide Peace Prisoners of war War zones, military operation zones International tribunals

In 2020, a total of 144 initiatives were presented in parliament concerning human rights (compared to 217 in 2019). More than half of these fit into two main categories: economic, social and cultural rights (forty-eight) and women's rights (twenty-six). Around a third are then distributed in three other categories: children's rights (fourteen), ratification of international instruments (fourteen), and civil and political rights (fourteen). The remaining categories make up just over 20% of the law proposals presented: rights of persons with disabilities (eight), rights of migrants, refugees and minorities (seven), torture and prison conditions (six), racism (three), disarmament and international humanitarian law and criminal law (two), and national human rights institutions (two). There were no initiatives presented regarding forced disappearances.



Around 70% of bill proposals are presented through parliamentary processes (compared to 90% in 2019): there was a substantial rise in proposals presented through government initiatives, from nineteen in 2019 to thirty-eight in 2020, particularly to tackle the emergency COVID-19 pandemic. One was presented by the Regional Council of Tuscany (bill S.1876) through regional initiatives on regulations concerning intimate and emotional relationships of prisoners. Two bill proposals were presented by the CNEL to ratify and implement ILO Convention No. 184 on Safety and Health in Agriculture Convention (bills C.2666 and S.1937).

Among the 144 bill proposals presented, fifteen were approved by one branch of Parliament and 20 were definitively approved, passing into law: most cases concerned governmental plans to convert into law previous decrees adopted to tackle the COVID-19 pandemic, or authorising the ratification and implementation orders for international instruments. Only two proposals that passed into law were on Parliamentary initiative: "Parliamentary proxy to the government to reorder, simplify and strengthen measures to support dependent children through single and universal child benefit payments" (l. 1 April 2020, No. 46); "Ratifying and implementing ILO Convention No. 190 on Violence and Harassment" (l. 15 January 2021, No. 4).

Racism

Even though Italy is frequently urged to combat all forms of racism, racial discrimination, xenophobia and hate speech through recent recommendations by international bodies (see Part III, The United Nations System, II.B), only about 2% of the bills present in parliament in 2020 concerned the subject, as follows:

1. **C.2400** - *Hon. Maria Rosaria Carfagna (FI) and others*
   Amending art. 61 of the Criminal Code, on common aggravating circumstances for discrimination and hate crimes
   21 February 2020: Presented to the Chamber of Deputies
   8 April 2020: Assigned (examination not yet begun)

2. **C.2532** - *Hon. Mario Alejandro Borghese (Mixed, MAIE-Movimento associativo italiani all'estero)*
   Principles to foster the integration of foreign students through the teaching of European culture and traditions in history and literature in schools of all levels
   8 June 2020: Presented to the Chamber of Deputies
   To be assigned

3. **C.2634** - *Hon. Alessandro Fusacchia (Mixed) and others*
   Provisions to promote diversity and inclusion in schoolbooks and establishing a national observatory
   6 August 2020: Presented to the Chamber of Deputies
   28 September 2020: Assigned (examination not yet begun)

Civil and Political rights

Of the fourteen bills related to civil and political rights, the promotion of which is outlined in the targets of Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels), almost a third concern freedom and confidentiality of communications (fourteen); three concern containment measures of COVID-19; two about forms of coercion and psychological violence; two about religious freedom and one bill for each of the following: right to vote; freedom of information; procedural safeguards.

1. **S.1659** - *Conte-II Government*
   Conversion into law of law-decree 30 December 2019, No. 161, on urgent amendments to regulations on the surveillance and the interception of communications and conversations
   7 January 2020: Presented to the Senate
   20 February 2020: Approved

2. **S.1725** - *Sen. Achille Totaro (FdI)*
   Introducing art. 600.1 of the Criminal Code on personality conditioning
   19 February 2020: Presented to the Senate
   9 June 2020: Assigned (examination not yet begun)

3. **C.2394** - *Conte-II Government*
   Conversion into law, with amendments, of law-decree 30 December 2019, No. 161, on urgent amendments to regulations on the surveillance and the interception of communications and conversations
   20 February 2020: Transmitted by the Senate
   27 February 2020: Definitively approved. Law

4. **C.2477** - *Hon. Cosimo Maria Ferri (IV)*
   Measures to contain the COVID-19 virus through the use of mobile devices, as well as provisions to ensure confidentiality and other fundamental rights in using and managing those devices
   23 April 2020: Presented to the Chamber of Deputies
   To be assigned

5. **S.1786** - *Conte-II Government*
   Conversion into law of law-decree 30 April 2020, No. 28, on urgent measures on

the functionality of systems for the interception of communications and conversations, further measures on the Prison Administration Act, and on integrative and coordinating provisions on administrative, civil and accounting justice and urgent measures to introduce a COVID-19 warning system
30 April 2020: Presented to the Senate
17 June 2020: Approved

6. **S.1845** - *Conte-II Government*
Conversion into law, with amendments, of law-decree 20 April 2020, No. 26, on urgent measures on elections in 2020
15 June 2020: Transmitted by the Chamber of Deputies
19 June 2020: Definitely Approved. Law

7. **S.1849** - *Sen. Elio Lannutti (M5S) and others*
Amending art. 21 of the Constitution, concerning the freedom of information in order to protect fundamental human rights
16 June 2020: Presented to the Senate
8 April 2021: Assigned (examination not yet begun)

8. **C.2547** - *Conte-II Government*
Conversion into law, with amendments, of decree-law 30 April 2020, No. 28, on urgent measures on the functionality of systems for the interception of communications and conversations, further measures on the Prison Administration Act, and on integrative and coordinating provisions on administrative, civil and accounting justice and urgent measures to introduce a COVID-19 warning system
17 June 2020: Transmitted by the Senate
25 June 2020: Definitively approved. Law.

9. **C.2592** - *Hon. Jessica Costanzo (M5S) and others*
Introducing art. 613-*quater* of the Criminal Code, concerning the crime of social and emotional isolation
15 July 2020: Presented to the Chamber of Deputies
28 September 2020: Assigned (examination not yet begun)

10. **S.1970** - *Conte-II Government*
Conversion into law of decree-law 7 October 2020, No. 125, on urgent measures on extending the declaration of a state of emergency due to the emergency COVID-19 pandemic and for the continued work of the COVID-19 warning system and on the implementation of EU Directive 2020/739 of 3 June 2020
7 October 2020: Presented to the Senate
11 November 2020: Approved

11. **S.1998** - *Sen. Marinella Pacifico (Mixed) and others*
Regulations on publishing the data of persons held on the criminal offenders register
2 November 2020: Presented to the Senate
25 February 2021: Assigned (examination not yet begun)

12. **S.2015** - *Sen. Paolo Tosato (L-SP-PSd'Az) and others*
Amending the Criminal Code regarding combatting and preventing anti-Christian hate discrimination and violence
9 November 2020: Presented to the Senate
9 March 2021: Assigned (examination not yet begun)

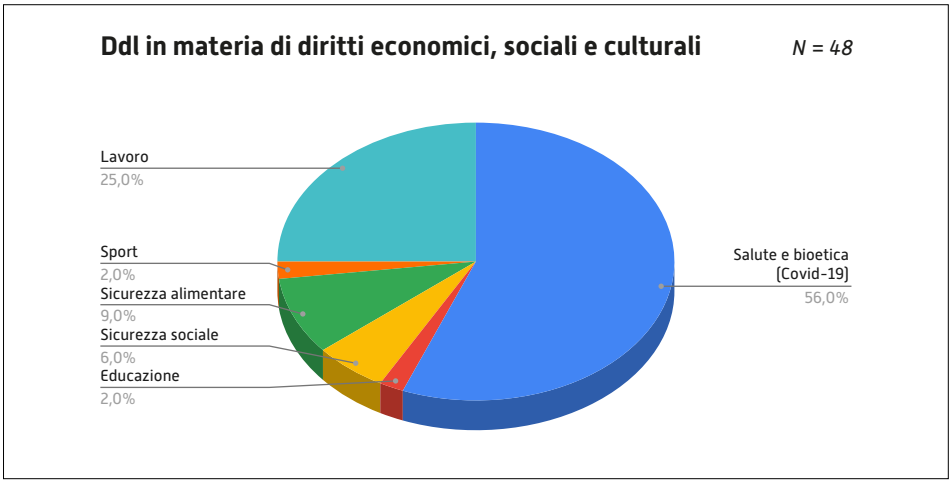
13. **C.2779** - *Conte-II Government*
    Conversion into law, with amendments, of decree-law 7 October 2020, No. 125, on urgent measures to extend the declaration of a state of emergency due to the emergency COVID-19 pandemic and for the continued work of the COVID-19 warning system and on the implementation of EU Directive 2020/739 of 3 June 2020
    12 November 2020: Transmitted by the Senate
    25 November 2020: Definitively approved. Law.

Economic, social and cultural rights (including bioethics and environmental rights)

Economic, social and cultural rights were not only the highest presented category of bills in 2020 (forty-eight) but also the category that showed greatest relevance to pursuing the SDGs. Over half of the legislation in this category refers to health and bioethics (Goal 3: Ensure healthy lives and promote well-being for all at all ages), due mainly to the high number of bills adopted to tackle the emergency COVID-19 pandemic (sixteen in total).

The remaining bills (in descending order) concern:

- *employment related rights*: right to work, health and safety in the workplace, regulating agile working, hiring and firing, trade union freedoms, establishment of the ethical trademark designating quality work, illegal intervention and provision of work and workers' training (Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all);
- *food security* (Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture);
- *social security*, focusing on pension funds, tax benefits, checks and processes (Goal 1: End poverty in all its forms everywhere; Goal 10: Reduce Inequality within and among countries);
- *education*, focusing on equal education (Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all);
- *right to sport* (Goal 3: Ensure healthy lives and promote well-being for all at all ages).

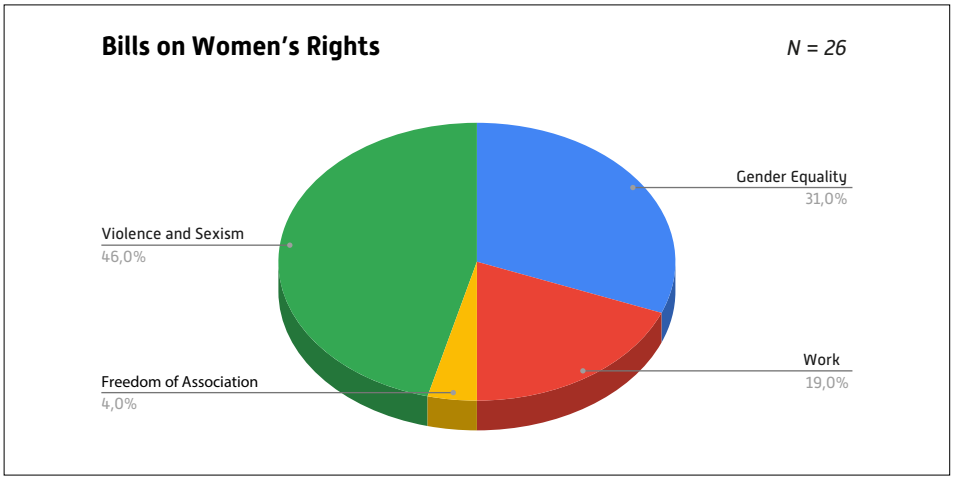


Women's rights

The main theme tackled by the legislator on bills concerning the protection of women's rights was the combatting all forms of violence (incitement of hate, stalking, domestic violence, sexist language in the media, and so on).

In line with Goal 5 (Achieve gender equality and empower all women and girls), around a third of bills regarding the promotion of gender equality and equal opportunities for men and women. They focus on overcoming the gender pay gap and on equal representation in the following areas: bodies of publicly controlled companies, constitutional bodies, independent authorities, assemblies representing local and regional authorities, professional associations, professional sport.

Five bills concern the participation of women in the workforce: one bill concerns promoting women's freedom of association.



Torture, prison conditions and the rights of detained persons

1. **S.1697** - *Sen. Franco Mirabelli (PD) and others*
   Amending art. 39 of the regulation regarding standards on the Prison Administration Act and on measures that restrict and limit freedom, pursuant to the decree of the President of the Republic 30 June 2000, No. 230, on telephone correspondence of detainees
   5 February 2020: Presented to the Senate
   3 September 2020: Assigned (examination not yet begun)

2. **S.1754** - *Sen. Grazia D'Angelo (M5S) and others*
   Provisions on the legal education officers of the Department of Prison Administrative
   4 March 2020: Presented to the Senate
   17 November 2020: Currently under examination by the Commission

3. **C.2488** - *Hon. Maria Rosaria Carfagna (FI) and others*
   Amending art. 47-*ter* of law 26 July 1975, No. 354, on house arrest and the optional referral of sentence enforcement for detainees subject to the special detention regime pursuant to art. 41-*bis* of the same law
   8 May 2020: Presented to the Chamber of Deputies
   15 June 2020: Assigned (examination not yet begun)

4. **S.1876** – *Regional Council of Tuscany*
   Amending law 26 July 1975, No. 354, on the protection of intimate emotional relationships of detainees
   10 July 2020: Presented to the Senate
   17 November 2020: Assigned (examination not yet begun)

5. **S.1897** - *Sen. Cinzia Leone (M5S)*
   Measures to regulate the use of medically assisted reproduction by detainees
   23 July 2020: Presented to the Senate
   23 September 2020: Assigned (examination not yet begun)

6. **C.2735** - *Hon. Wanda Ferro (FDI) and others*
   Amending articles 391-*bis* and 583-*quater* of the Criminal Code, on facilitating communication for detainees or prisoners in violation of the Prison Administration Act and of injury and harm to staff members
   22 October 2020: Presented to the Chamber of Deputies
   17 November 2020: Assigned (examination not yet begun)

Rights of the child

The two most common subjects in this field are combatting violence against children (including bullying, cyberbullying and child pornography) and protecting the rights of the child in fostering and adoption procedures.

The remaining bills concern: civil rights (focusing on the juvenile justice system); right to health; establishing a National Day of Children's Participation.

1. **S.1668** - *Sen. Gianfranco Rufa (L-SP-PSd'Az)*
   Amending law 24 December 2003, No. 363, on the compulsory use of a back protector, safety bib and protective inserts for Alpine skiing and snowboarding for under 14-year-olds

15 January 2020: Presented to the Senate
2 November 2020: Assigned (examination not yet begun)

2. **C.2337** - *Hon. Mara Lapia (M5S) and others*
   Provisions on school support pathways on the subject of health for preventing, diagnosing and treating chronic illnesses in children of school age
   15 January 2020: Presented to the Chamber of Deputies
   3 March 2020: Assigned (examination not yet begun)

3. **C.2348** - *Hon. Roberto Novelli (FI) and others*
   Provisions on the participation of children in beauty contests
   24 January 2020: Presented to the Chamber of Deputies
   11 March 2020: Assigned (examination not yet begun)

4. **S.1690** - *Hon. Devis Dori (M5S) and others*
   Amending the Criminal Code, as of law 29 May 2017, No. 71, and the royal law-decree 20 July 1934, No. 1404, converted, with amendments, by law 27 May 1935, No. 835, on preventing and combatting bullying and re-education measures for minors
   31 January 2020: Transmitted by the Chamber of Deputies
   3 June 2020: Currently under examination by the Commission

5. **S.1692** - *Sen. Simone Pillon (L-SP-PSd'Az) and others*
   Provisions for combatting bullying, cyberbullying, pornography and violence among minors
   3 February 2020: Presented to the Senate
   3 June 2020: Currently under examination by the Commission

6. **S.1743** - *Sen. Licia Ronzulli (FIBP-UDC)*
   Amending law 29 May 2017, No. 71, and other provisions to combat bullying and cyberbullying
   27 February 2020: Presented to the Senate
   3 June 2020: Currently under examination by the Commission

7. **S.1747** - *Sen. Alessandrina Lonardo (FIBP-UDC)*
   Amending law 29 May 2017, No. 71, and other provisions to combat bullying and cyberbullying
   3 March 2020: Presented to the Senate
   3 June 2020: Currently under examination by the Commission

8. **C.2449** - *Hon. Devis Dori (M5S) and others*
   Provisions for juvenile reparative justice and mediation in criminal matters
   26 March 2020: Presented to the Chamber of Deputies
   24 June 2020: Assigned (examination not yet begun)

9. **S.1843** - *Sen. Alessandra Maiorino (M5S) and others*
   Amending law 4 May 1983, No. 184, on adoption of children by individual citizens
   10 June 2020: Presented to the Senate
   23 September 2020: Assigned (examination not yet begun)

10. **S.1877** - *Sen. Elvira Lucia Evangelista (M5S) and others*
    Provisions for fostering and adopting children
    9 July 2020: Presented to the Senate

11 November 2020: Assigned (examination not yet begun)

11. **S.1979** - *Sen. Vincenzo Santangelo (M5S) and others*
Amending law 4 May 1983, No. 184, on the adoption of children and recognising their biological origins
15 October 2020: Presented to the Senate
25 May 2021: Currently under examination by the Commission

12. **C.2788** - *Hon. Maria Teresa Bellucci (FDI) and others*
Establishing a National Day of Children's Participation
18 November 2020: Presented to the Chamber of Deputies
18 December 2020: Assigned (examination not yet begun)

13. **C.2796** - *Hon. Maria Teresa Bellucci (FDI) and others*
Amending the Civil Code and law 4 May 1983, No. 184, on protecting minors and the right of children to a family and on the Parliamentary proxy to the government on the condition of children outside the family and on establishing a specialised section for families and children within the court and appeals court system
20 November 2020: Presented to the Chamber of Deputies
6 May 2021: Currently under examination by the Commission

14. **C.2801** - *Hon. Paolo Siani (PD) and others*
Provisions for preventing the mistreatment of children
26 November 2020: Presented to the Chamber of Deputies
14 January 2021: Assigned (examination not yet begun)

Migrants, refugees, asylum seekers, minorities

The entry into force of law 18 December 2020, No. 173 "Conversion into law, with amendments, of law-decree 21 October 2020, No. 130, on urgent measures for immigration, international and subsidiary protection", which significantly revises the preceding security decree issued during the first Conte Government (Conte I) (l.d. 4 October 2018, No. 113 and l.d. 14 June 2019, No. 53) is particularly noteworthy. The law focuses on amending and integrating the following articles: art. 1 (Residence permit and border checks), art. 2 (Procedures to recognise international protection), art. 3 (Administrative detention and amendments to lgs.d. 142/2015), art. 4 (Asylum seeker reception and holders of international protect), art. 5 (Integration) and art. 13 (Ombudsperson for the rights of persons deprived of personal freedom).

1. **C.2397** - *Hon. Jessica Costanzo (M5S)*
Parliamentary proxy to the government for the recognition of the profession of intercultural mediators
20 February 2020: Presented to the Chamber of Deputies
15 July 2020: Assigned (examination not yet begun)

2. **S.1851** - *Sen. Francesco Giacobbe (PD)*
Establishing a Parliamentary Commission on Italian emigration across the world
17 June 2020: Presented to the Senate
16 September 2020: Assigned (examination not yet begun)

3. **C.2570** - *Hon. Paolo Formentini (League) and others*
Establishing a Parliamentary Commission on the protection and geo-economic enhancement of Italian emigration across the world

6 July 2020: Presented to the Chamber of Deputies
28 October 2020: Commission examination concluded

4. **C.2636** - *Hon. Giorgia Meloni (FDI) and others*
   Amending law 5 February 1992, No. 91, to combat the fraudulent acquisition of citizenship through marriage, and amending consolidated law of the decree of the President of the Republic 30 May 2002, No. 115, on legal aid in immigration processes
   6 August 2020: Presented to the Chamber of Deputies
   7 October 2020: Assigned (examination not yet begun)

5. **C.2682** - *Hon. Massimiliano Panizzut (League) and others*
   Amending art. 19-*bis* of legislative decree 18 August 2015, No. 142, on identifying and verifying the ages of unaccompanied foreign minors
   29 September 2020: Presented to the Chamber of Deputies
   3 November 2020: Assigned (examination not yet begun)

6. **C.2727** - *Conte-II Government*
   Conversion into law of law-decree 21 October 2020, No. 130, on urgent provisions on immigration, international and complementary protection, amending articles 131-*bis*, 391-*bis*, 391-*ter* and 588 of the Criminal Code, and measures on the ban of access to public establishments and to public entertainment venues, on combatting abusive use of the internet and on regulations regarding the National Ombudsperson on the rights of persons deprived of their personal liberty
   21 October 2020: Presented to the Chamber of Deputies
   9 December 2020: Approved

7. **S.2040** - *Conte-II Government*
   Conversion into law, with amendments, of law-decree 21 October 2020, No. 130, on urgent provisions on immigration, international and subsidiary protection, amending articles 131-*bis*, 391-*bis*, 391-*ter* and 588 of the Criminal Code, and measures on the ban of access to public establishments and to public entertainment venues, on combatting abusive use of the internet and on regulations regarding the National Ombudsperson on the rights of persons deprived of their personal liberty
   9 December 2020: Transmitted from the Chamber of Deputies
   18 December 2020: Definitively approved. Law

Rights of persons with disabilities

The bills presented regarding the rights of persons with disabilities concern social security (parental leave, tax benefits, social benefits); the right to health (focusing on home-based health care); promoting an independent life for persons with disabilities (with particular reference to removing physical and mental barriers); and the right to education.

1. **S.1717** - 18th Legislature
   Sen. Andrea Cangini (FIBP-UDC) and others
   Provisions to introduce a family caregiver allowance
   13 February 2020: Presented to the Senate
   28 July 2020: Currently under examination by the Commission

2. **C.2486** - *Hon. Lisa Noja (IV)*
   Amending art. 12 of the consolidated text on income tax, pursuant to the decree of

the President of the Republic 22 December 1986, No. 917, on tax credit for households with children whose wage consists of study grants, benefits, prize money or subsidies for study or professional training aiming at job placement for persons with disabilities
5 May 2020: Presented to the Chamber of Deputies
3 June 2020: Assigned (examination not yet begun)

3. **C.2506** - *Hon. Elena Maccanti (League) and others*
Amending the Highway Code, pursuant to legislative decree 30 April 1992, No. 285, on parking spaces for vehicles of persons with disabilities, pregnant women or mothers with young children (under two years old) and others
20 May 2020: Presented to the Chamber of Deputies
28 September 2020: Assigned (examination not yet begun)

4. **C.2509** - *Hon. Michele Nitti (Mixed, Popolo Protagonista-Alternativa Popolare) and others*
Parliamentary proxy to the government on regulating training activities for students with disabilities in institutions of higher education for art, music and dance
22 May 2020: Presented to the Chamber of Deputies
9 June 2020: Assigned (examination not yet begun)

5. **C.2596** - *Hon. Daniela Ruffino (FI)*
Provisions to ensure home-based health interventions for non-self-sufficient persons from the National Health Service
17 July 2020: Presented to the Chamber of Deputies
8 September 2020: Assigned (examination not yet begun)

6. **C.2612** - *Hon. Guia Termini (M5S) and others*
Provisions for social inclusion for persons with sensory impairments through removing barriers to communication and information
28 July 2020: Presented to the Chamber of Deputies
28 October 2020: Currently under examination by the Commission

7. **C.2661** - *Hon. Alberto Ribolla (League) and others*
Provisions on excluding compensation and payments relating to health care treatments or social security for persons with disabilities from an individual's moveable assets when carrying out an Equivalent Economic Situation Indicator (ISEE) calculation
14 September 2020: Presented to the Chamber of Deputies
15 October 2020: Assigned (examination not yet begun)

8. **S.1990** - *Sen. Elisa Pirro (M5S) and others*
Measures to incentivise health care treatments and home-based social health care for non-self-sufficient persons
28 October 2020: Presented to the Senate
25 February 2021: Assigned (examination not yet begun)

Forced Disappearances

As in 2019, no bills were presented in this area in 2020.

National Human Rights Institutions

In 2020, two bills were presented on the creation of national human rights institutions in Italy (Goal 16: promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels), with particular reference to the National Ombudsperson on the protection of the rights of victims of intentional violent crime (S.1758) and the National Ombudsperson on the rights of prison police officers (C.2587).

Overall, 16 bills have been presented in this area from the beginning of the XVIII legislature (23 March 2018), of which:

- four on the Commission / National Authority for Human Rights (S.1065, C.855, S.593 and S.654);
- three on the Ombudsperson for the Rights of the Family (S.183, S.108 and S.129)
- two on the National Ombudsperson (C.1415 and C.145)
- two on the Ombudsperson for Persons with Disabilities (S.1035 and C.1884)
- two on the National Ombudsperson on the Protection of the Rights of Victims of Intentional Violent Crime (C.500 and S.1758)
- one on the Ombudsperson for Combatting Discrimination (C.1794)
- one on the Ombudsperson for the Rights of Detained Persons (S.1550)
- one on the National Ombudsperson on the rights of prison police officers (C.2587).

Of these bills, only two are currently in the discussion phase in the commission: bill C.855 "Establishing a national Commission for the promotion and protection of fundamental human rights" and bill C.1794 "Establishing a National Ombudsperson for combatting discrimination".

1. **S.1550** – 18th Legislature
   Sen. Franco Mirabelli (PD) and others
   Provisions on the Ombudsperson for the rights of detained persons
   11 October 2019: Presented to the Senate
   12 February 2020: Assigned (examination not yet begun)

2. **C.1884** - 18th Legislature
   Hon. Andrea De Maria (PD)
   Establishing an Ombudsperson for persons with disabilities
   3 June 2019: Presented to the Chamber of Deputies
   28 November 2019: Assigned (examination not yet begun)

3. **C.1794** - 18th Legislature
   Hon. Giuseppe Brescia (M5S) and others
   Establishing an Ombudsperson for persons with disabilities and amending legislative decree 9 July 2003, No. 215
   18 April 2019: Presented to the Chamber of Deputies

11 December 2019: Currently under examination by the Commission

4. **S.1065** - 18th Legislature
   Sen. Mauro Antonio Donato Laus (PD)
   Establishing a National Authority for Human Rights
   13 February 2019: Presented to the Senate
   9 December 2019: Assigned (examination not yet begun)

5. **S.1035** - 18th Legislature
   Sen. Maria Rizzotti (FI-BP)
   Establishing an Ombudsperson for persons with disabilities
   31 January 2019: Presented to the Senate
   5 March 2019: Assigned (examination not yet begun)

6. **C.1415** - 18th Legislature
   Hon. Francesco Silvestri (M5S)
   Establishing a National Ombudsperson
   5 December 2018: Presented to the Chamber of Deputies
   To be assigned

7. **S.654** - 18th Legislature
   Sen. Valeria Fedeli (PD) and others
   Establishing a National Commission for promoting and protecting fundamental human rights
   12 July 2018: Presented to the Senate
   4 October 2018: Assigned (examination not yet begun)

8. **S.593** - 18th Legislature
   Sen. Nicola Morra (M5S)
   Establishing a National Independent Commission for the promotion and protection of human rights and fundamental freedoms
   5 July 2018: Presented to the Senate
   To be assigned

9. **C.855** - 18th Legislature
   Hon. Lia Quartapelle Procopio (PD) and others
   Establishing a National Commission for the promotion and protection of fundamental human rights
   3 July 2018: Presented to the Chamber of Deputies
   11 December 2019: Currently under examination by the Commission

10. **C.500** - 18th Legislature
    Hon. Walter Rizzetto (FDI) and others
    Establishing a National Ombudsperson on the protection of the rights of victims of intentional violent crime
    11 April 2018: Presented to the Chamber of Deputies
    25 July 2019: Assigned (examination not yet begun)

11. **S.183** - 18th Legislature
    Sen. Maria Rizzotti (FI-BP) and others
    Regulations for family counselling services to protect and support families, maternity, infancy and young people during developmental age and establishing a National Ombudsperson for family policies
    28 March 2018: Presented to the Senate

26 June 2018: Assigned (examination not yet begun)

12. **C.145** - 18th Legislature
Hon. Paolo Russo (FI)
Establishing a National Ombudsperson
23 March 2018: Presented to the Chamber of Deputies
26 June 2018: Assigned (examination not yet begun)

13. **S.108** - 18th Legislature
Sen. Antonio De Poli (FI-BP) and others
Establishing an Ombudsperson for the Rights of the Family
23 March 2018: Presented to the Senate
21 June 2018: Assigned (examination not yet begun)

14. **S.129** - 18th Legislature
Sen. Antonio De Poli (FI-BP)
Provisions on protecting the rights of the family and establishing an Ombudsperson for the Rights of the Family
23 March 2018: Presented to the Senate
21 June 2018: Assigned (examination not yet begun)

15. **S.1758** - *Sen. Isabella Rauti (FdI) and others*
Establishing a National Ombudsperson on the Protection of the Rights of Victims of Intentional Violent Crime
5 March 2020: Presented to the Senate
21 July 2020: Assigned (examination not yet begun)

16. **C.2587** - *Hon. Andrea Delmastro Delle Vedove (FDI) and others*
Provisions and parliamentary proxy to the government to reorganise prison administration and the establishment of a National Ombudsperson on the rights of prison police officers
13 July 2020: Presented to the Chamber of Deputies
3 August 2020: Assigned (examination not yet begun)

Ratification of international instruments

Fourteen bills promote the ratification and implementation of the following international instruments:

- Amendments to the Rome Statute of the International Criminal Court, ratified pursuant to law 12 July 1999, No. 232, adopted in Kampala on 10 and 11 June 2010 (C.2332)
- ollutant Release and Transfer Register Protocol, done in Kyiv on 21 May 2003 (S.1702)
- International Labour Organization Convention No. 188 on Work in Fishing, done in Geneva on 14 June 2007 (S.1728)
- Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature, done in Strasbourg on 28 January 2003 (S.1764)
- Additional Protocol to the Convention on the Transfer of Sentenced Persons, made in Strasbourg on 18 December 1997 and Protocol amending

the Additional Protocol to the Convention on the Transfer of Sentenced Persons, done in Strasbourg on 22 November 2017 (C.2522)

- Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done in Strasbourg on 10 October 2018 (C.2579)
- Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in Kigali on 15 October 2016 (C.2655)
- Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, done in Utrecht on 16 November 2009 (S.1935)
- Convention No. 184 on Safety and Health in Agriculture, adopted in Geneva on 21 June 2001 by The General Conference of the International Labour Organization (C.2666 and S.1937)
- International Labour Organization Convention No. 190 Eliminating Violence and Harassment in the World of Work, adopted in Geneva on 21 June 2019 (S.1944)
- Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms, made in Strasbourg on 24 June 2013 (S.1958)
- European Charter for Regional or Minority Languages, made in Strasbourg on 5 November 1992 (C.2785)
- Stockholm Convention on Persistent Organic Pollutants, with Annexes, made in Stockholm on 22 May 2001 (C.2806)

Disarmament, international humanitarian and criminal law

1. **C.2344** - 18th Legislature
   Hon. Walter Rizzetto (FDI) and others
   Amending art. 604-*bis* of the Criminal Code, on denials, trivialisation and condonation of the Foibe massacres, as well as law 30 March 2004, No. 92, and other provisions to remember and raise awareness about these events
   21 January 2020: Presented to the Chamber of Deputies
   26 February 2020: Assigned (examination not yet begun)

2. **C.2391** - *Hon. Benedetta Fiorini (FI) and others*
   Introducing art. 4-*bis* of law 23 June 1927, No. 1188, on the ban on dedicating roads, monuments, plaques or any other permanent memorials to convicted war criminals
   18 February 2020: Presented to the Chamber of Deputies
   21 April 2020: Assigned (examination not yet begun)

II Prime Minister's Office (Presidency)

The organisation of the Prime Minister's Office is regulated by the decree of the Prime Minister of 1 October 2012. The Prime Minister's Office has a number of departments and offices (the so-called general structures), which the Prime Minister draws on for guidance and coordination functions regarding specific political and institutional fields. Of particular importance for human rights is the Department for Equal Opportunities.

A number of committees and commissions with specific tasks of economic and social relevance operate within the ambit of the Prime Minister's Office. These include the Commission for International Adoptions and the National Committee on Bioethics.

A Department for Equal Opportunities: UNAR and Observatory for the Fight against Paedophilia and Child Pornography

The Department for Equal Opportunities, established under the auspices of the Prime Minister's Office, plans and coordinates legislative, administrative and research initiatives in all areas pertaining to equal opportunities policies. In September 2019, Elena Bonetti was named Minister for Equal Opportunities and the Family.

The Department was instituted by Prime Ministerial Decree 28 October 1997, No. 405, subsequently amended by various decrees (the most recent being ministerial decree 8 April 2019). It comprises three offices: the Office of General Affairs, International Affairs and Social Measures; the Office for Measures to Promote Equality and Equal Opportunities; and the National Anti-Racial Discrimination Office (UNAR).

UNAR was established by lgs.d. 9 July 2003, No. 215, in compliance with the European Community directive 2000/43/EC. Its mission is to guarantee observance of the principle of equal treatment of individuals, to monitor the efficacy of current instruments against discrimination and to help to stamp out forms of discrimination based on race or ethnic origin, while analysing their diversified impact on gender and their connection with other forms of racism of a cultural and religious nature.

In 2020, the UNAR presented its own Parliamentary Report on activities carried out in 2019. According to data presented in the report, as part of its initiatives preventing and combatting racial discrimination, in 2019 the UNAR received 3394 reports of discrimination: around 73% of the total referred to ethnical or racial motives; religious or personal beliefs was the next largest percentage (326 cases, 9.6% of the total, of which 212 concerned anti-Islamism and sixty-nine concerned anti-Semitism); sexual orientation and gender identity (219 cases); disability (188 cases) and age (108 cases). There was a total of fifty-three communications related to multiple discrimination.

In addition to the UNAR, the following collegial bodies also have their secretariat within the Department for Equal Opportunities: the Inter-Ministerial Commission for support to victims of trafficking, violence and severe exploitation (as per Presidential Decree 14 May 2007, No. 102); the Committee for Prevention and Combating Female Genital Mutilation; the Committee to Evaluate the Legitimacy to Act on Behalf of People with Disabilities; the

Committee for Equal Opportunities for Men and Women; and the Observatory for the Fight against Paedophilia and Child Pornography.

The Observatory for the Fight against Paedophilia and Child Pornography was established in accordance with l. 3 August 1998, No. 269, as amended by l. 6 February 2006, No. 38, with the task of acquiring and monitoring data and information relating to activities carried out by all Government bodies to prevent and stamp out the sexual abuse and exploitation of minors. A further significant task of the Observatory is to prepare the *National Plan for preventing and combating sexual abuse and exploitation of minors*.

B Commission for International Adoptions

Art. 6 of the Hague Convention on the Protection of Minors and Cooperation in Respect of Intercountry Adoption, which was adopted on 29 May 1993 and came into force on 1 May 1995, requires State Parties to establish a central authority to ensure that adoptions of foreign children adhere to the principles established by the Convention itself. To comply with this requirement, via l. 31 December 1998, No. 476, Italy instituted the Commission for International Adoptions, which operates through the Prime Minister's Office. The Commission is Italy's central authority for the implementation of the Hague Convention.

The Commission is comprised of a Chair, nominated by the Prime Minister (since September 2019: Elena Bonetti, Minister for Equal Opportunities and the Family), a vice-chair (since October 2020, Vincenzo Starita) and the following members: three representatives of the Prime Minister's Office; a representative of the Ministry of Foreign Affairs; a representative of the Ministry of Education; a representative of the Ministry for Labour and Social Policy; one from the Ministry of the Interior; two from the Ministry of Justice; one from the Ministry of Health; one from the Ministry of Economy; four from the Unified Conference between State and Region; three from family associations; and experts.

According to the data provided by the Commission, in 2020, 526 international adoption procedures were concluded (-46% compared to the previous year, with 969 adoptions). The biggest falls in adoptions came from China (five adoptions in 2020 compared to forty-six in 2019), Russian Federation (twenty-three adoptions in 2020 compared to 126 in 2019), Belarus (thirty-five adoptions in 2020 compared to seventy-five in 2019) and Bulgaria (nineteen adoptions in 2020 compared to fifty in 2019).

C National Committee on Bioethics

The National Committee on Bioethics performs an advisory role vis-à-vis the Government, Parliament and other institutions, with a view to providing guidelines on legislative and administrative instruments designed to define the criteria to use in medical and biological practice in order to protect human rights. It also has a role in informing the public and in raising awareness with regard to ethical problems arising in connection with progress in scientific research and in technological applications in the life sciences and in healthcare.

The Committee was established by the Prime Ministerial decree 28 March 1990. It is made up of the following bodies: President (Lorenzo d'Avack, professor in Philosophy of Law); Vice President (Riccardo Di Segni, Chief Rabbi of Rome; Laura Palazzani, pro-

fessor in Philosophy of Law; Mariapia Garavaglia, former Minister of Health); Office of the President (made up of the Chair and the Vice Chairs); and Assembly.

One of the tasks of the Committee is to produce studies and make recommendations that can also be used for legislative purposes. The Committee's documents offer in-depth focus and reflection on ethical and legal issues that arise as knowledge in the field of the life sciences advances. According to their nature and purpose, the documents are classified as: *opinions* (approved in the Committee's assembly on the basis of inquiries conducted by working groups); *motions* (urgent documents approved with a two-thirds majority of those present in the assembly); *responses* (documents in which the Committee makes recommendations on issues about which opinion has been sought by other bodies or by physical persons).

In 2020, two motions were approved (Medical Futility or Unreasonable Prolongation of Treatments in Young Children with Low Expectations of Life, 30 January; Animal testing with reference to the prohibition set by the Legislative Decree 26/2014 regarding xenotransplants and abuse substances, 27 March) and five opinions, all on issues concerning the COVID-19 pandemic:

- COVID-19: clinical decision-making in conditions of resource shortage and the "pandemic emergency triage" criterion (8 April);
- COVID-19: public health, individual freedom, social solidarity (28 May);
- Biomedical research for novel therapeutic treatments within the COVID-19 Pandemic: ethical issues (22 October);
- COVID-19 and children: from birth to school age (23 October);
- COVID-19 and vaccinations: ethical aspects on research, costs and distribution (27 November).

III Ministry of Foreign Affairs and International Cooperation

The Ministry of Foreign Affairs has a number of directorate-generals and offices that deal specifically with human rights, disarmament and cooperation. In 2020, responsibility for issues dealt with in the United Nations ambit was entrusted to Undersecretary of State Manlio Di Stefano.

Particularly noteworthy is Office II – Human rights advocacy and international humanitarian law, Council of Europe, which falls within the directorate-general for Political Affairs and Security. Other offices in the same directorate are: Office I – The United Nations system and the institutional reform process, peacekeeping operations and preventive diplomacy; Office V – Disarmament, arms control and nuclear, biological and chemical non-proliferation, Office of the national authority for the banning of chemical weapons; Office VI – Organisation for Security and Cooperation in Europe. The issue of human rights also relates across the board to the directorate-general for Global Affairs (Office IV – Energy, environmental protection and sustainable global development policies), the directorate-general for the European Union (Office III – European space of freedom, security and justice, the free movement of people and migratory flows towards the European Union) and the directorate-general for Development Cooperation (Office I – Development of cooperation policies within the European Union; Office II

– Multilateral development cooperation; Office VI – Emergency and humanitarian aid; Office VIII – Planning and monitoring of the cooperation budget; gender issues, the rights of children and people with disabilities).

A Inter-Ministerial Committee for Human Rights (CIDU)

The Inter-Ministerial Committee for Human Rights (CIDU) was established by decree of the Minister of Foreign Affairs on 15 February 1978, No. 519. Its composition was updated by Prime Ministerial decree 11 May 2007. Over 2012–2013, the CIDU was involved in a restructuring process; initially phased out as a result of the spending review, it was re-established on 5 September 2013. It maintained its functional competences because it was regarded as indispensable, both for its advice and its strategic guidance regarding the promotion and protection of human rights and in ensuring correct compliance with the obligations that Italy assumed following the signature and ratification of conventions and international agreements in this field.

The CIDU is chaired by a functionary of the diplomatic service appointed by the Minister of Foreign Affairs: Fabrizio Petri in 2020. Committee members include representatives of the Prime Minister's Office, of various Ministries and of many different institutions (such as the Association of Italian Municipalities (ANCI); the Conference of Presidents of the Regions and Autonomous Provinces; the Union of Italian Provinces (UPI); the National Commission for UNESCO; the Italian Committee for UNICEF; the Italian Society for International Organisation (SIOI); as well as three eminent personalities in the field of human rights.

The CIDU has the following tasks: to promote measures necessary for ensuring full compliance with international obligations assumed by Italy; to facilitate the implementation of international conventions in Italy; to draft the reports Italy is required to submit to the pertinent international organisations; and to maintain and develop appropriate relations with civil society organisations engaged in promoting and protecting human rights.

On 30 November 2020, the CIDU approved the *Fourth National Action Plan on Women, Peace and Security, 2020 – 2024*. The plan has four objectives to promote and strengthen: the role of women in peace and decision-making processes; the gender perspective in peace operations; women's empowerment, gender equality and protection of the human rights of women and children in conflict and post-conflict zones; communication, advocacy and training initiatives at all levels regarding the Women, Peace and Security Agenda, while at the same time enhancing partnerships with civil society groups to effectively implement Resolution 1325(2000).

B Italian National Commission for UNESCO

The Commission was established by inter-ministerial decree on 11 February 1950, at the Ministry of Foreign Affairs, two years after Italy entered the Organisation, and pursuant to art. 7 of the UNESCO Charter.

Members of the Commission include representatives from Parliament, the Prime Minister's Office, various Ministries, public and private agencies, local authorities and civil society.

The Commission's mission is to promote the implementation of UNESCO programmes in Italy; to spread the ideals of the Organisation, especially among the younger generations; to disseminate information on its principles, goals and activities, thus stimulating action by institutions, civil society and the world of culture, education and science. The Commission also advises the Government regarding its dealings with UNESCO.

In 2020, as nominated by the Ministry of Foreign Affairs, the President of the Commission was Franco Bernabè, while Enrico Vicenti held the post of Secretary General.

In 2020, the National Commission carried out many activities (seminars, conferences, meetings in schools, competitions, exhibitions, workshops, and shows) in various Italian cities, especially regarding the different UN International Days, including International Mother Language Day (21 February), World Poetry Day (21 March), World Book and Copyright Day (23 April) and International Jazz Day (30 April).

IV Ministry of Labour and Social Policies

Many departments and offices within the Ministry of Labour and Social Policies deal specifically with human rights.

The following are particularly noteworthy:

- *Directorate-general for Inclusion and Social Policies.* Functions: promoting policies to combat poverty, social exclusion and severe marginalisation; promoting and monitoring policies for children and adolescents, and the protection of minors; coordination policies for the social inclusion, protection and promotion of the rights and opportunities of persons with disabilities; managing the National Fund for Social Policies, the National Fund for the Non Self-Sufficient, the National Fund for Childhood and Adolescence and other funds for financing social policies and monitoring transferred resources; study, research and investigations concerning social policies; participation in all the pertinent internationally significant activities, and managing relations with the European Union, the Council of Europe, the International Labour Organisation, the United Nations and the Organisation for Economic Cooperation and Development.
- *Directorate-General for the third sector and corporate social responsibility.* Functions: promoting and supporting the activities carried out by third sector subjects, especially initiatives relating to social promotion and voluntary associations, in order to facilitate the growth of an active society welfare to support policies of social inclusion and integration; promotion, development and coordination of policies, initiatives and activities to support the spread of corporate social responsibility.
- *Directorate-General for immigration and integration policies*. Functions: planning migratory flows and managing and monitoring entry quotas of foreign workers as well as bilateral cooperation agreements with countries of origin; coordinating policies for social and job integration of foreign immigrants and initiatives designed to prevent and combat discrimination, xenophobia and racism; developing international cooperation for activities to prevent and study social and employment emergencies, and for initiatives regarding work-related migratory flows.

In 2012, the Directorate-General for immigration and integration policies took over the functions of the Committee for Foreign Minors, which was abolished in accordance with the decree on the so-called spending review (art. 12, para. 20 of l.d. 95/2012, converted into law, with amendments, in l. 135/2012). Consequently, the Directorate-General is now responsible for monitoring the presence of foreign minors temporarily present on Italian territory, whether they be unaccompanied minors present on Italian territory or admitted minors.

As regards unaccompanied minors, the Directorate-General may adopt two kinds of measures. The first is "no repatriation", which amounts to activating the procedures for integrating the person into Italy; the second is "assisted repatriation", designed to reunite the child with his or her family in their country of origin. As regards the first option, responsibility for managing and monitoring the measures is placed in the hands of local authorities. The most frequent choice made for unaccompanied minors in Italy is to place them in residential care facilities for children.

As regards admitted minors, the Directorate-General makes decisions, following due appraisal and according to predetermined criteria, at the request of organisations, associations or Italian families, regarding the temporary admission of children into the framework of humanitarian programmes. The Committee then makes decisions on temporary fostering and repatriation. It keeps a register of minors already admitted into the framework of humanitarian programmes and defines criteria for assessing requests for the admission of temporarily admitted minors.

By 31 December 2020, 7080 unaccompanied foreign minors were registered with the Commission, around one thousand more than on 31 December 2019. The majority of these were boys, around 96.4% of the total. The main countries of origin were Bangladesh (22%), Tunisia (15.3%) and Albania (13.7%): together, these three represent just over half of all unaccompanied minors in Italy (51%). The region with the highest number of minors (about 28.9% of the total) in reception centres is still Sicily, in line with a trend which has consolidated over many years, followed by Friuli Venezia Giulia (11%) and Lombardy (9.9%).

A National Observatory for Children and Adolescents

The Observatory performs a role of coordination among central administrations, local and regional bodies, associations, professional groups and non-governmental organisations dedicated to children's issues.

It was instituted by l. 23 December 1997, No. 451, and is currently regulated by the decree of the President of the Republic (d.p.r.) 14 May 2007, No. 103, which assigns joint chair by the Ministry of Labour and Social Policies and the Undersecretary of State to the Prime Minister's Office mandated with family policies. It is made up of representatives from national and local public administrations, associations and professional orders, voluntary and third sector organisations as well as experts in the field of children's rights.

Presidential decree 103/2007 assigns the Observatory the task of preparing three documents about the condition of childhood and adolescence in Italy:

- The *National Plan of Action and of Measures to Safeguard the Rights and Development of Children and Adolescents.* Drawn up every two years, the plan contains the fundamental strategic guidelines and concrete commitments that the Government intends to pursue in order to develop a satisfactory policy for children and adolescents in Italy. The latest National Plan (the fourth) adopted by the Observatory refers to the years 2016/2017.
- The *Report on the Condition of Children and Adolescents in Italy*. It aims to provide an updated picture of the aspects that characterise the condition of children and adolescents in Italy and of the social services system and measures for promoting and protecting the rights of children and adolescents. In October 2017, the Observatory published the Report on the Condition of Childhood and Adolescence in Italy 2012-2015.
- The *Periodic Report of the Government to the UN Committee on the Rights of the Child regarding the application of the 1989 International Convention on the Rights of the Child*, pursuant to art. 44 of the Convention. The latest report (combined 5th and 6th reports) was discussed in Italy in 2019.

In carrying out its functions, the National Observatory uses the National Centre of Documentation and Analysis for Children and Adolescents, which performs documentation, analysis, research, monitoring and training tasks.

More specifically, the National Centre of Documentation deals with:

- collecting and disseminating regional, national, European, and international norms and regulations, as well as statistical data and scientific studies;
- creating an annually-updated map of public, private and private social services (including assistance and health services), and resources for children at the national, regional and local level, based on information coming from the Regions;
- analysing the situation of childhood and adolescence in Italy, including the conditions of foreign minors;
- preparing an outline, based on National Observatory directives, of the biennial report on the condition of children in Italy, and of the Government report to the United Nations Committee on the Rights of the Child on the domestic implementation of the Convention on the Rights of the Child;
- formulating proposals, also at the request of local authorities, for the creation of pilot projects designed to improve children's living conditions as well as to assist mothers during the prenatal period.

B National Observatory Monitoring the Conditions of Persons with Disabilities

The Observatory is an advisory body offering technical and scientific support in defining national policies regarding disabilities.

It was established by l. 3 March 2009, No. 18, at the Ministry of Labour, Health and Social Policies. It is chaired by the Ministry of Labour and includes a maximum of forty members. Members are appointed by ministerial decree and represent central administrations involved in defining and implementing disability-related policies; regional and local authorities; social security institutions; the National Statistics Institute; trade unions; and most representative associations and organisations of persons with disabilities,

joined by a maximum of five experts of proven experience in the field of disabilities. Within the Observatory there is also a technical-scientific committee, with the purpose of analysis and scientific direction in relation to the activities and tasks of the organism. In 2020, the coordinator of this committee was Giampiero Griffo.

The Observatory's tasks include the following: to promote the implementation of the United Nations Convention on the Rights of Persons with Disabilities and to prepare, together with CIDU, the national report for the monitoring procedure established by that Convention; to prepare a biennial Plan of Action on disability implementing national and international laws; promotes the realisation of studies and research that can help to identify priority areas in which to direct actions and actions for the promotion of the rights of persons with disabilities.

In 2020, the Observatory carried out two meetings, deliberating (in November) the launch of four research projects on the following issues: condition of persons on the autism spectrum; material and psychological impact of the COVID-19 emergency on the families of persons with disabilities; separating and creating a register of emarginated groups; mobility on trains and airplanes of persons with disabilities.

V Ministry of Justice

Within the Ministry of Justice there are various departments and bureaus specifically involved with human rights. The most relevant are:

- *Office II*: (Directorate-General for litigation and human rights – Department of legal affairs): it is actively involved in examining cases pending before the European Court of Human Rights. In addition, it is responsible for drafting the reports requested by international human rights bodies, mainly by the Council of Europe and UN bodies and committees.
- *Department for Juvenile Justice and Community*: the office deals with promoting and protecting the rights of unaccompanied foreign minors and of persons at risk of social exclusion.

VI Judicial Authorities

The judiciary, which is to say the various justice authorities – ordinary, administrative and auditing – constituting judicial power, is the fundamental guarantee of rights and legality in a state that respects the principles of democracy, the division of powers and the rule of law. The Italian courts – the Constitutional Court, which delivers judgments regarding the constitutionality of laws; the Supreme Court, which is the court of last resort; the penal and civil tribunals and trial courts; and those concerned with administrative, audit and military matters – deal in a contentious manner with cases which often affect human rights in the most various ways and according to the most disparate perspectives. Access to a judge to obtain a ruling on a right that a plaintiff claims has been breached is a fundamental human right, linked to which are the many other procedural rights that distinguish a fair trial.

Other than adjudicating on individual cases, the judicial system builds and develops the applicable legislation, via its own case-law. In recent years, Italian case-law on human rights has been strongly influenced by case-law deriving from the international courts, particularly the European Court of Human Rights and the European Court of Justice. The interaction between the national judicial bodies and international courts with jurisdiction on human rights highlights the universal nature of fundamental rights. Dialogue with international courts and with other States' courts (applying the same standards on human rights) is not just relevant to a State's Supreme Courts, but all judges who can draw from discussions in foreign and international courts to ensure access of fundamental rights, in full respect of the Constitution and of relevant legislation.

Part IV of this Yearbook is specifically devoted to a summary presentation of cases in the Italian courts on which rulings were delivered in 2020 (with particular reference to the judgments of the Constitutional Court and the Supreme Court), and of case law elaborated by the European Court of Human Rights or the Court of Justice of the European Union which directly concerns Italy, either because the Italian State was the "defendant" or because the intervention of the European judge regarded pleas presented by Italian citizens or related to Italian legal norms.

VII Independent Authorities

In this section, the five independent authorities that relate more pertinently to human rights are described: the Communications Regulatory Authority (AGCOM); the Data Protection Authority; the Committee Guaranteeing the Implementation of the Law on Strikes Affecting Essential Public Services; the National Ombudsperson for Children and Adolescents; and National Ombudsperson for the Rights of Persons in Prison or Deprived of Liberty.

A Communications Regulatory Authority (AGCOM)

AGCOM was set up by l. 31 July 1997, No. 249. It has a dual mandate: to ensure correct competition among market actors and to guarantee the fundamental freedoms of citizens in the area of communications, particularly with regards to the protection of minors.

The composition of the Authority is disciplined by decree 6 December 2011, No. 201 (the so-called Save Italy decree), and its conversion into law (22 December 2011, No. 214). In 2020, the Authority was restructured as follows: *Chair*: Giacomo Lasorella; *Commissioners*: Laura Aria, Antonello Giacomelli, Elisa Giomi, Enrico Mandelli.

According to the annual report on work programmes and activities in 2020 (reference period: May 2019 - April 2020), the Authority focused on carrying out surveillance activities on protecting minors, on promotional advertising about games with additional payment requirements and on combatting hate speech.

Regarding child protection, the Authority conducted its usual sanctioning investigations for violating duties regarding broadcasting programming.

There have been seventy-seven sanction procedures initiated in total (in the audio-visual commercial communication sector, following a violation of the child protection regulations) and concluded, of which seventy-one concluded with enforcing the foreseen sanctions and six with archiving measures.

B Data Protection Authority

The Data Protection Authority was instituted by l. 31 December 1996, No. 675, later substituted by lgs.d. 30 June 2003, No. 196 (Personal data protection code), with the aim to ensure protection of the fundamental rights and freedoms and respect for the dignity of persons, in the processing of personal data.

The Data Protection Authority is a collegial body made up of four members elected by Parliament, who remain in office for a seven-year non-renewable mandate. The current body is made up of Antonello Soro (Chair), Augusta Iannini (Vice Chair), Giovanna Bianchi Clerici and Licia Califano.

In 2020, the Authority issued 215 provisions to protect the fundamental rights of individuals regarding the processing and circulation of personal data, with particular reference to the following issues (among others): freedom of the press; right to education, work, health and scientific research; rights of minors; handling of sensitive data; and internet and social media.

C Commission Guaranteeing the Implementation of the Law on Strikes Affecting Essential Public Services

The Commission was instituted by l. 12 June 1990, No. 146, and subsequent amendments. It is comprised of five members designated by the Chairs of the Chamber of Deputies and the Senate, among experts in matters of constitutional law, labour law and industrial relations, and was instated by decree of the President of the Republic. In 2020, the members of the Commission were: Giuseppe Santoro Passarelli (Chair), Alessandro Bellavista, Domenico Carrieri, Orsola Razzolini and Franco Carinci.

Some of the main tasks of the Commission are:

- assessing the capacity of essential services to guarantee protection of both the right to strike and the enjoyment of constitutionally guaranteed human rights;
- requesting that those calling the strike delay the date of abstention from work if the Commission intends to attempt conciliation, or if it finds that the abstention violates legal and/or contractual obligations for strikes in essential public services;
- pointing out to those calling the strike any violations of norms concerning advance notice or any other requirements relative to the phase preceding collective abstention;
- notifying the appropriate authority which can order strikers back to work of situations where the strike or collective abstention could give rise to an imminent, probable risk of infringing constitutionally protected human rights;
- taking note of behaviour by administrations or enterprises which provide essential public services in clear violation of the law;
- assessing behaviour of both parties and if any non-compliance or violation of legal or contractual obligations relative to essential services emerges, inflicting penalties

pursuant to art. 4 of l. 146/1990 as amended by art. 3 of l. 83/2000, ordering the employer to apply the disciplinary actions.

In 2020, the emergency COVID-19 pandemic brought about a significant decrease in the number of strikes in the service sector, although this sector still had a higher number compared to the industrial sector. According to data from the *Annual Report on Initiatives carried out in 2020*, the overall number of essential public service strikes called was 1473 (2346 in 2019). Following the interventions by the Commission, or those spontaneously withdrawn, the total number of strikes that took place decreased to 895 (compared to 1463 in 2019).

The majority of strike actions were called in full compliance with the law, agreements and regulations. Of the 1,473 calls for strike, the Commission intervened with only 300 preventative actions as the strikes were deemed illegitimate. Furthermore, this led to adjustments in over 90% of cases; there were only seventeen behaviour evaluation proceedings opened by the Commission and concluded with the imposition of sanctions.

There are still high levels of unrest in the following sectors (411) local public transport (259 calls for strike), environmental hygiene (202), air transport (149), national health service (112), cleaning and multi-services (111).

Furthermore, in 2020, there were four national general strikes (compared to fourteen in 2019) all organised by trade unions with insignificant levels of participation.

D Italian Independent Authority for Children and Adolescents (National Ombudsperson for Children and Adolescents)

The Italian Independent Authority for Children and Adolescents was established with l. 12 July 2011, No. 112 to ensure the full implementation and protection of children's rights at a national level, pursuant to the International Convention of the Rights of the Child 1989, ratified by Italy by law 27 May 1991, No. 176. This national institution coordinates and encourages measures to implement the Convention, with the aim of guaranteeing the rights contained within it.

It is a single presiding organ, and the holder of the post is appointed by the Presidents of the Chamber of Deputies and of the Senate, who choose a figure of unquestioned morality, independence and professional competence in the field of children's rights. The term of office lasts four years. It has autonomous powers, administrative independence and the organisation is not tied to a hierarchical chain. The establishing law gives the Ombudsperson varies duties, which are split between two main courses of actions: promoting the rights and interests of minors and ensuring their full implementation, both concerning the rights enshrined in international treaties and those in European and national law. The Ombudsperson works as a coordination hub between the international level, where it was established, and the local level, at which it carries out its primary functions. To this end, the Ombudsperson is called to give their independent opinion on the Italian Government's periodic report to the UN Treaty Committee; the report is prepared every five years, presenting the steps the State has adopted to implement the

rights recognised in the Convention and the progress made for the enjoyment of those same rights.

In May 2021, the Ombudsperson published the Annual Report presented to Parliament on its site, describing the initiatives carried out in the previous year. 2020 was a difficult year for Ombudsperson: right from the start, the pandemic had serious repercussions on children. It was also the year that (in April) Filomena Albano's mandate as Ombudsperson came to an end and (in November) the new Italian Independent Authority for Children and Adolescents, Carla Garlatti, took her place.

The arrival of the COVID-19 pandemic made it necessary to change initiatives in 2020, to the subject of protecting minors concerning the effects and consequences of the emergency. The sudden explosion of the virus, the rampant spread of fear and uncertainty, school closures, and the blocking of any opportunity to meet in person have significantly impacted on minors.

Under the banner of *"Human Rights don't stop" (I diritti non si fermano),* the Ombudsperson continued its initiatives both nationally and internationally. Furthermore, it continued its work from previous years to ensure that the fulfilment of the right to be heard and participation as provided by art. 12 of the Convention, encouraging dialogue among children and adolescents on subjects of their choice. In 2020, the Youth Constitutional Court of the Ombudsperson started its first initiatives on 4 February, with its first meeting taking place in the Ombudsperson's headquarters. The group expanded to include new members, reaching a number of 24 adolescents between 14 and 17 years of age. The Court had already been called upon to give its opinion before the outbreak of the COVID-19 pandemic, but the Constitutional Court did not stop its work during the health emergency – it continued to provide its valuable perspective to the Ombudsperson. In March 2020, one of the most difficult months of the emergency, the youth members of the Constitutional Court organized a communication campaign, taking up the challenge first-hand and getting out their message with own pictures and concepts. With the slogan *"This time it's our turn to protect the grown-ups"* and with the hashtags *#Istayathome* (*#iorestoacasa)* and *#everythingwillbealright* (*#andràtuttobene)*, they kicked off a social initiative aiming to raise awareness among their peers on the risks connected with the spread of the virus and on precautions they can take to mitigate those risks.

Again, with regard to the full implementation of the right to be heard and to participation, the Ombudsperson continued working on the *Gruppi di parola* initiative: support groups that, through short interventions, seek to help children (six to eleven years old) and adolescents (twelve-fifteen) who living through parental separation. The Ombudsperson expressed the hope that these *Gruppi di parola* support groups could become a structural measure within children and family plans. In line with previous years' projects, in January 2020, the Ombudsperson signed a new convention with the Catholic University and the Toniolo Institute to update the mapping of the *Gruppi di Parola* support groups, broaden the national network, reinforce the open exchange of experiences and publicise their presentation video.

With regard to communication with the Italian Parliament and Government, in the first phase of the emergency, the Ombudsperson sent institutional notes to the Prime Minister, opening up the opportunity to pinpoint specific steps for vulnerable minors, specifically those with disabilities, out-of-family children, and juvenile prisoners in criminal institutions, as well as allowing children to enjoy moments of social relations with respect to their own safety and that of the community. More notes were also sent to other institutions, this time with recommendations. These included: the way of carrying out interviews of unaccompanied foreign minors when they enter reception centres for new arrivals; the situation of children and adolescents in Italy following the measures to stop the spread of COVID-19; the end and expected restart of the school year; and the administration of State exams. The Ombudsperson also expressed her opinion concerning three bills (A.C. 1794; A.C. 1323; A.C. 855) on establishing an institutional body to protect human rights and to tackle discrimination. On this occasion, she acknowledged the importance of establishing a Commission or Independent Authority for the protection of human rights, emphasising the need to introduce regulations that clearly excludes all situations regarding the protection of children's rights from the scope of this new body, delegating them instead to the Ombudsperson given that this area of its competence has already been recognised. Instead, the Ombudsperson envisions other forms of collaboration and consultancy between the two entities. The Ombudsperson also expressed her opinion on bills No. 105, 920 and 717 on law amendment 5 February 1992, No. 91 concerning citizenship.

In continuing to devote her full attention to the new needs attributable to the effects of the COVID-19 health emergency, the Ombudsperson tackled the issue of mental health. The effects of the pandemic on the mental health of children due to the repression of fundamental rights (socialising, school learning, access to sport, the right to live in a serene and balanced environment) are well-known. In this regard, the Ombudsperson contributed to the preparation of the National Institute of Health report No. 43/2020 (interim guidelines for adequate support for mental health in children during the COVID-19 pandemic) published in June 2020, underscoring the importance of adopting strategies to ensure continuity and support to the neuropsychological development of children.

One of the main issues faced in 2020 was the school system, particularly in light of the consequences and impact of the pandemic.

The Ombudsperson was asked to express its opinion, during the conversion phase, on law decree 8 April 2020 No. 22 on *"Urgent measures on the regular conclusion and smooth start of the school year and on the conduct of state examinations"*. Furthermore, it addressed proposals and suggestions to the Committee of Experts of the Ministry of Education in light of the start of the new school year and carrying out of the final school graduation exam.

Among the various promotion activities within schools and education, in partnership with the Ministry of Education, the Ombudsperson drew up a mini guide for teachers called: *"Remote teaching and rights of students"*. It aimed to offer teachers a practical methods and tools necessary to continue

teaching from remote while fully respecting the children's rights during the suspension of regular classroom activity due to the COVID-19 pandemic.

The Ombudsperson carried out numerous actions and initiatives to protect unaccompanied foreign minors in Italy. According to Ministry of Labour and Social Policies statistics, there were 7,080 unaccompanied foreign minors in the country as of 31 December 2020. Art. 11 of law No. 47/2017 on "Provisions concerning measures to protect unaccompanied foreign minors", delegates the duty of monitoring the guardianship system to the Ombudsperson for Children and Adolescents. To this end, the Ombudsperson presented the project *"Monitoring guardianship for unaccompanied foreign minors"* financed with resources by AMIF 2014-2020 fund (Asylum, Integration and Migration Fund). This project refers to the Specific Goal 2 (integration initiatives) of the AMIF national programme, given that improving and expanding the guardianship system are necessary steps to further develop the reception system for unaccompanied minors and access to services, with a context of promoting active citizenship and respectful integration.

On 20 and 21 February 2020, the Ombudsperson's project was presented to the Intergroup in the European Parliament, to representatives of the European Commission, to the *Délégué général aux droit de l'enfant de la communauté française de Belgique* (Ombudsperson for children for the French-speaking community in Belgium) Bernard De Vos and to representatives of national and local organisations. During the same event, two out of the seven publications were presented *"Acting now, thinking about the future"* and the *"Monitoring report on the guardianship system"*. The first contains working practices to support the guardianship system, the second presents quantitative data from the first monitoring report financed by the European AMIF fund. In 2020, the Ombudsperson carried out the second statistical analysis on the national monitoring of the state of implementation of the guardianship system for unaccompanied foreign minors in Italy.

Within a network initiative with institutions and the reception system, 281 round tables were established to facilitate synergy and awareness among individuals involved in the guardianship system.

As it has the status of permanent guest, the Ombudsperson participated in various Observatories across 2020: the National Observatory for Children and Adolescents, National Observatory on the rights of the family, National Observatory for the integration of foreign students and intercultural education, and the Observatory on tackling gambling and serious addiction. It also participated in the Inter-institutional Table for preventing and combatting cyberbullying and Steering Committee against educational poverty. With the National Observatory for Children and Adolescents, there is a specific working group tasked with planning initiatives, forming strategy, and writing policies to protect and promote the rights of children and adolescents during the COVID-19 pandemic and its subsequent effects.

Continuing with work started in 2018, throughout 2020, many activities were conducted to promote the Convention. These came in the form of training initiatives for professionals whose job entails them working with children,

training programmes for the police forces, as well as those for sports technicians collaborating with the Italian Olympic Committee (CONI).

The Ombudsperson edited various publications on child protection across the year in question. In April 2020, the document *"The right to be heard of minors within the judicial system"* was published, reporting the outcome of a survey on the way to implement the right to be heard within the court and juvenile court system, as well as in other civil prosecution offices. In addition, the research and proposal document *"Protecting orphans of domestic violence"* was published. It was written by a working group of the national constitutional court of associations and organisations, chaired by the Ombudsperson with technical support provided by the *Istituto degli innocenti* institute.

The Ombudsperson also focuses on other categories of vulnerable persons: victims of child abuse and hospitalised children. Regarding the former, the Ombudsperson was part in a Scientific Committee for the Regional Index on child abuse in Italy, actively participating in the meetings. The investigation was conducted by the Italian humanitarian organisation *Cesvi*: it estimated the vulnerability of children to abuse in various parts of Italy. With regards to the delicate situation of the hospitalisation of children and young people, three Memoranda of Understanding, respectively between the Ombudsperson and the Ministry of Education between the Ombudsperson and the Italian Children's Hospital Association (AOPI) and between the Ministry of Education and AOPI. These served to set up initiatives to address the handling of COVID-19 in the most difficult moments of recovery and hospitalisation of younger patients.

As regard to initiatives on an international level, once again in 2020, as a full member of the European Network of Ombudspersons for Children (ENOC), the Ombudsperson took part in European Network initiatives. The theme of 2020 was the Child Rights Impact Assessment (CRIA), consisting of an evaluation of the impact that laws and political choices have on children's and adolescents' rights. In this context, on 21 September 2020, the Ombudsperson took part in the Autumn Seminar (online), during which the draft version of this year's position statement was presented (and subsequently approved by the General Assembly in November). Furthermore, the Ombudsperson followed the work of the 13th European Forum on the rights of the child on "Delivering for children: towards the European strategy on the rights of the child, which took place online on 29, 30 September and 1 October 2020.

Finally, to promote international law and awareness-raising campaigns on specific children's rights issues in Italy, the Ombudsperson for Children and Adolescents carried out translations into Italian of laws and documents inherent to child protection, such as *Child Poverty: declaration by the Committee of Ministers of the Council of Europe*, the *Statement on the protection of children against sexual exploitation and abuse in times of the Covid-19 pandemic* adopted on 15 May 2020 by the Lanzarote Committee and the translation and circulation of the ENOC letter on the situation of migrants at the border between Greece and Turkey.

E National Ombudsperson for the Rights of Persons in Prison or Deprived of Liberty

This Ombudsperson was established by Art. 7 of l.d. 23 December 2013, No. 146, converted with amendments by l. 21 February 2014, No. 10. It is collegial and consists of the Chair and two members chosen from independent people who are competent in areas relating to the protection of human rights. Members are nominated, following a decision of the Council of Ministers, by a Presidential Decree, having heard the competent parliamentary commissions, with a five-year mandate which may not be extended.

Since 2016, the National Ombudsperson for the Rights of Persons in Prison or Deprived of Liberty has been Mauro Palma, alongside the other members Daniela De Robert and Emilia Rossi.

The Ombudsperson is tasked with ensuring that custody of persons in prison and persons subject to other types of limitations on personal freedom is conducted in accordance with the rules and principles set out in the Constitution, in international conventions on human rights, and national laws. As an independent state monitoring body, it has the faculty to visit penitentiary institutions and other structures used to host persons subject to measures restricting their personal freedom (police stations, immigration centres, secure residencies which have been recently reopened after the closure of secure psychiatric hospitals and hospital wings where compulsory health treatment is carried out) without requiring authorisation. The aim of these visits is to highlight any critical issues and, collaborating with competent authorities, find solutions to resolve them. Furthermore, at the institutions it controls, part of the National Ombudsperson's role is to resolve hostile situations or any situation which originates from complaints from incarcerated persons, reserving legal complaints to the judiciary authorities which need the intervention of a supervisory magistrate. After every visit, the Ombudsperson drafts a report of the observations and recommendations and forwards the report to the authorities. Finally, the Ombudsperson monitors procedures relating to forced repatriations pursuant to the system provided for in art. 8, para. 6 of EU Directive No. 115 of 2008.

Law 18 December 2020, No. 173 (conversion law of l.d. 21 October 2020, No. 130) introduced some considerable changes, above all the extension of the Ombudsperson's mandate by two extra years.

Law No. 173, in the context of a possible non-judicial remedy for persons deprived of their liberty, establishes that a detained foreign national can make appeals or oral and written complaints to the National Ombudsperson and to the Regional or Local Ombudspersons, on the basis of which the Ombudspersons will make specific recommendations to the relevant administration in order to remedy the violation, if it finds the appeals or complaints of the detained individuals to be valid.

The same law intervened in the new denomination of the Ombudsperson, removing the phrase "detained or" (*detenute o*) from the initial wording of l. 21 February 2014, No. 10 (establishing the Ombudsperson), and confirming the National Ombudsperson's appointment as the Italian Prevention Mechanism outlined in the Optional Protocol into primary law. This also established that the National Ombudsperson can delegate Territorial Ombudspersons to

carry out its functions on the detention of migrants and persons in healthcare, social-healthcare and welfare structures, and therapeutic and reception communities, for adults and minors. This delegation can last a maximum of six months.

In 2020, the National Ombudsperson conducted 106 visits across the national territory, monitoring the rights of persons deprived of liberty in prison, as well as inspecting police custody, health and migratory process conditions.

For the same period, with regard to monitoring activities of forced repatriation, 9 operations were monitored, mostly destined for Tunisia (4), Egypt (2), Nigeria (1), Albania (1) and Georgia (1).

In 2020, in line with powers attributed by art. 19 letter C of the OPCAT on National Preventive Mechanisms, the Ombudsperson spoke at various meetings and hearings on the year's situation in front of the competent Parliamentary Commissions He spoke to the Senate Justice Committee on the conversion into law of law decree No. 28 of 30 April 2020 on house arrest and ways for the National and Regional Ombudspersons to access prison sections used to hold inmates under the special prison regime pursuant to art. 41-*bis* of the Prison Administration Act. Furthermore, he spoke in front of the Commission for Constitutional Affairs of the Chamber of Deputies on establishing a National Commission for the Protection and Promotion of Human Rights.

In November, the National Ombudsperson published the third edition of *"Da dove"* series entitled Caged (*In Gabbia)*. It discussed the relationship between space and denied freedom and collects the comments of authoritative voices on restricted space as a newly and differently imagined distorted setting.

VIII Non-Governmental Organisations

In Italy, numerous non-governmental organisations are active in promoting and protecting human rights. Some that are organised in networks at national and international levels have gained consultative status with international organisations and actively participate in their programmes.

As of 31 December 2020, 119 Italian non-governmental organisations hold consultative status with the United Nations Economic and Social Council, six of which have general status; ninety-six have special status and eighteen have roster status. There are 215 non-governmental organisations with headquarters or representative offices in Italy enjoying participatory status with the Council of Europe dealing specifically with human rights.

In addition, some of the most important international non-governmental organisations have local branches in Italy. These include Amnesty International, the International Federation on Human Rights, Save the Children, Médecins sans Frontières and ActionAid.

Non-governmental organisations play a significant role in monitoring the level of compliance with and protection of human rights in Italy. In 2020, the following monitoring reports were published and are particularly noteworthy:

- Antigone Association: *XVII National Report on Detention Conditions – Beyond the Virus*. According to data published within this report, as of 30 December 2020, there were 53,364 detainees in Italian prisons, around 3,000 more than the official number of beds available (50,438). Between February and May 2020, there was a significant decrease in the prison population (around 8,500 fewer people). The biggest reduction of detainees in prison, and therefore in overcrowding, is mostly due to measures contained in l.d. 17 March 2020, No. 18 (the so-called "Cure Italy" decree). However, the Italian prison system experienced waves of rioting and protests in the first few days of March, the likes of which had never been seen before. These riots resulted in the deaths of thirteen inmates. According to the report, the possible causes of these protests may have been a combination of: fear of contamination; lack of phone calls and videocalls (these subsequently increased, as partial compensation for not being able to see or receive visits from family or loved ones); lack of volunteers, teachers and socio-educational workers, who were no longer able to access prisons; lack of hand sanitizer, disinfectant, medical gloves and masks.
- Working Group for the UN Convention on the Rights of the Child (CRC): *XI Update Report on Monitoring the UN Convention on the rights of children and adolescents in Italy.* In addition to providing a review of the last twenty years of progress made and work still to be done, the report analyses the impact of the ongoing pandemic, which has brought to light the most important critical issues monitored over the years, and in some incidences exacerbated them.
- Italian Alliance for Sustainable Development (*Alleanza Italiana per lo Sviluppo Sostenibile* -ASviS): *Report 2020*. The report analyses Italy's progress in achieving the Sustainable Development Goals of the Agenda 2030. The 2019 updates on the SDG targets and estimation in trends for 2020 (as contained in the report) show that even before the pandemic, Italy was not on course for sustainable development. Moreover, between 2018 and 2019, there are some signs of improvement in four Goals (poverty, economic and working condition, circular economics, effective institutions), substantial stability in other ten Goals (food, health, education, inequality, including gender inequality, hygiene and sanitary systems, energy, climate change, terrestrial ecosystems, partnership) and a decreased performance in two Goals (innovation and cities).

  In order to change this course of events, in light of the European guidelines, the ASviS invites the Government to: define new procedures for the Interministerial Committee of Economic Planning and Sustainable Development (CIPESS) to adopt to assess investment projects (including those financed by European resources), adopting a "sustainability check"; create a public research body for future studies and strategic programming, to carry out research on predictable trends in social, environmental and economic issues and to assess its implications for public policy; update the law on that establishes a report on the indicators for Equitable and Sustainable Well-being (BES) within the context of the budgetary cycle, to align it with the SDGs used by the European Semester; give the task of carrying out quantitative assessments on the impact of main planning

and budget documents of the SDGs to the Parliamentary Budget Office, in line with the European Semester guidelines; establish a permanent civil society consultancy platform to cross-assess the impact of legal provisions on the Agenda 2030; and propose structural change to the Parliamentary Commission to allow a more integrated analysis of legislative provisions on the various dimensions of the Agenda 2030.

- FOCSIV – Volunteers across the world: *Landowners. The Landgrabbing Report 2020: Consequences on Human Rights, the Environment and Migration.* Land grabbing is the issue of wide-scale acquisition, through buying or renting land at low cost or expropriating lands of local populations for large (often single crop) agricultural cultivations in order to exploit natural resources. The report contains a series of information and data on this issue and highlights some cases of abuse suffered by the poorest communities who are losing the right to their lands and livelihood.

  The report investigates country case studies, analysing the mechanisms that cause conflict and tension between businesses, financial authorities and States and local communities. In this respect, there are various proposals for ways to regulate business behaviour, access to justice, support human rights defenders, and stand besides indigenous populations and local communities.

- *Sbilanciamoci!* Campaign: (Let's flip it!) *2020 Report - How to use public expenditure for human rights, peace and the environment.* The Report contains 101 detailed proposals by the 47 countries registered with the *Sblianciamoci!* campaign, starting from a detailed analysis of the quality of public spending in Italy. It aims to save and bring in more money, cut excessive or wasteful spending and allocate the money for more correct usage. It identified seven key areas: finance; work and wages; culture and knowledge; environment and sustainable development; welfare and rights; peace, cooperation and disarmament; and fair trade.

IX Teaching and research on human rights in Italian universities

In the Italian academic world, there has been an increase in research and training regarding human rights. The subject is now present in many different modules and in the curricula of many university and post-university courses, such as transdisciplinary research programmes. In the following pages, there is a mapping of the institutions and university research centres that work specifically in human rights related subjects, from three-year (bachelor's) and two-year specialisation (master's) degree programmes to one-year master's programmes and PhDs that were activated or published in 2020. The courses and structures highlighted contain "human rights" in their name, or other equivalent expressions such as "rights of people", "rights of man", or "fundamental rights". This mapping shows how widespread the teaching of human rights and its various dimensions has become in the academic environment.

University Institutions and Research Centres

University	Name	Founding year
University of Padova	University Human Rights Centre	1982
University of Salento	Inter-University Centre on Bioethics and Human Rights	1992
41 European universities in partnership	European Inter-University Centre for Human Rights and Democratisation (EIUC)	2002
University of Ca' Foscari, Venice	Human Rights Research Centre (CESTUDIR)	2012
University of Nuoro	Research Centre on the rights of persons and peoples	2016

Source: elaboration by the *2021 Yearbook* research and editorial committee.

Bachelor's Degree Courses

University	Name	Scientific Area
University of Padova	Political science, international relations, human rights	L-36: Political science and International Relations
Aldo Moro University of Bari	Immigration law, human rights and interculturality	L-14: Legal services

Source: elaboration by the *2021 Yearbook* research and editorial committee.

Master's Degree Courses

University	Name	Scientific Area
University of Bergamo	The Rights of Man, Migration and International Cooperation	LM-81: Cooperation development sciences
University of Bologna	International Cooperation on Human Rights and Intercultural Heritage	LM-81: Cooperation development sciences
University of Padova	Human rights and multi-level governance	LM-52: International Relations
University of Perugia	European judicial integration and human rights	LM-90: European Studies

Source: elaboration by the *2021 Yearbook* research and editorial committee.

Human Rights Courses

In 2020, a total of 204 human rights courses were taught in fifty-six universities. Around 55% of these were delivered via degree courses in the field of political and social sciences (112 modules), while just under 30% related to the area of law (seventy-four modules); six modules in the area of history, philosophy, pedagogy and psychology, four in the area of economics and statistics, four in the area of humanities and social science, two in the area of linguistics and two in the area of communications.

As in the years between 2010 and 2019, in 2020, the university with the greatest number of human rights teachings was Padova (sixteen modules), followed by Turin (thirteen), Rome Tre (eleven), Bologna (eleven) and Milan (eleven). Of the 204 courses available, sixty-one were taught in English - ten of which were at the University of Padova, six at the University of Milan, five at the University of Bologna, four at the University of Florence, three at the Universities of Palermo, of "La Sapienza" Rome, of Rome Tre and of Turin, two at the Universities of Catania, Genoa, LUISS, Macerata, Milan-Bocconi, Modena and Reggio Emilia and Trento as well as one at each of the following universities: Bari, Ferrara, Link Campus University, Milan-Bicocca Pavia, Perugia, "Tor Vergata" Rome, Siena, the University of Campania and the University of Salento.

University	Area	Degree Course	Teaching	Lecturer/ Professor
Aldo Moro University of Bari	Law	BA in Law: Immigration, Human Rights and Interculturality	International Protection of Human Rights	Giuseppina Pizzolante
			Taxation in integration and fundamental rights protection processes	Nicola Fortunato
	Political and social science	BA in Political Science, International Relations and European Studies	International Protection of Human Rights	Egeria Nalin
		MA in International Relations and European Studies	International Protection of Human Rights	Egeria Nalin
			Human Rights and Geopolitics of Religions	Roberta Santoro
			Migrations, borders and Human rights	Giuseppe Campesi
	History, philosophy, pedagogy and psychology	MA in Philosophical Sciences	History of Human Rights Philosophy	Francesca Romana Recchia Luciani
Giuseppe Degennaro LUM University	Law	BA in Law and Economics for Business and International Cooperation	International law with a module in Human Rights (in English)	Rita Ciccone
University of Bergamo	Law	MA in Human rights, Migration and International Cooperation	International Protection of Human Rights	Federica Persano

continued

University of Bologna	Political and social science	MA in Local and Global Development	Human Rights and Political Institutions	Raffaella Gherardi
		Masters' Degree in International Cooperation on Human Rights and Intercultural Heritage	Political Power Beyond State Boundaries: Migration, Development and Human Rights	Annalisa Furia
			Public Law and Protection of Fundamental Rights	Caterina Drigo
			Human rights and Children's rights	Annalisa Furia
			Justice, multiculturalism and human rights	Gustavo Gozzi
		MA in Criminology for Investigation and Security	Sociology of Human Rights	Paulus Albertus Blokker
	Law	5-Year Degree in Law	Fundamental Rights in the Society of Information	Daniela Memmo
			Human Rights, History and Comparative Cultures	Marco Cavina, Luca Mezzetti
			Fundamental rights	Caterina Drigo, Luca Mezzetti
			Fundamental rights	Edoardo Carlo Raffiotta
		MA in Legal studies	Fundamental rights	Luca Mezzetti
Free University of Bolzano	History, philosophy, pedagogy and psychology	BA in Social Studies	Public Law and the Protection of Fundamental Rights	Falanga Mario
University of Brescia	Law	MA in Legal Studies for Innovation	Legal Methods and innovation – Regulations for the Principles and Protection of Fundamental Rights	Adriana Apostoli

continued

University of Cagliari	Political and social science	MA in Public Administration	Fundamental Rights as Policy	Silvia Niccolai
		MA in International Relations	History, Ideas and Politics of Human Rights	Federica Falchi
University of Calabria	Political and social science	MA in Political Science	History of Human Rights and the Culture of Peace	Antonella Salomoni
	Law	5-Year Degree in Law	Theory of Human Rights	Helzel Paola Barbara
University of Camerino	Law	BA in Social Sciences for Non-profit Organisations and International Cooperation	International Protection of Human Rights	Agostina Latino
	Economics and Statistics	MA in Migration Management and Integration Policy with the European Union	History of Human Rights	Carlotta Latini
			Human Rights and Data Protection	Antonio Magni
			Constitutional Protection of Migrants' Rights	Tatiana Guarnier
University of Cassino and Southern Lazio	Law	5-Year Degree in Law	Fundamental Rights	Marco Plutino
University of Catania	Political and social science	MA in Global Politics and Euro-Mediterranean Relations	Human rights: a historical approach	Giorgia Agata Costanzo
			Human rights: a philosophical approach	Luigi Caranti
Magna Graecia University of Catanzaro	Law	5-Year Degree in Law	Human rights	Massimo La Torre, Andrea Romeo
University of Enna "Kore"	Law	BA in Strategic and Security Studies	Human Rights and Gender-related Issues	Lucia Corso
			Citizenship and Migrants' Rights	Daniele Anselmo
	Linguistics	MA in Language for Intercultural Communication	International Law and Human Rights	Paolo Bargiacchi

continued

University of Ferrara	Law	5-Year Degree in Law	Human Rights and Humanitarian Law in Armed Conflicts	Francesco Salerno
			International Human Rights	Alessandra Annoni
			The Islamic Question and the Human Rights Committee	Yadh Ben Achour
University of Florence	Law	5-Year Degree in Law	Courts and Rights in Europe: courses of protection	Silvia Sassi
			History and politics of globalisation and human rights	Lucia Re
	Political and social science	BA in Political Science	International Organisations and Human Rights	Luisa Vierucci
		MA in International Relations and European Studies	Courts and Rights in Europe: courses of protection	Paola Pannia
			International Human Rights Law	Luisa Vierucci
	History, philosophy, pedagogy and psychology	BA in Education and Training Studies	Intercultural Pedagogy and Human Rights	Emiliano Macinai
	Economics and Statistics	BA in Economic Development, International Social-Health Cooperation and Conflict Management	Human Rights and Armed Conflicts	Antonio Bultrini
		MA in Economics and Development	Politics of globalization and human rights	Lucia Re
University of Foggia	Law	BA in Investigative Science	Constitutional Law – Fundamental Rights	Davide Paris
			Comparative Public Law – Fundamental Rights	Francesca Rosa

continued

University of Genoa	Law	BA in Law and Business Economics	Constitutional Law and Fundamental Rights	Lara Trucco, Pasquale Costanzo
		5-Year Degree in Law	Rights of freedoms and social rights	Enrico Albanesi
			Tax Courts and Fundamental Rights	Alberto Marcheselli
	Political and social science	MA in Information and Publishing	Fundamental Rights and Freedoms	Edmondo Mostacci
		MA in International Relations	Human Rights and Environmental Protection	Pierangelo Celle, Lorenzo Cuocolo
			New technologies and protection of fundamental rights	Edmondo Mostacci
		MA in International studies and Cooperation	International and European Protection of Human Rights	Pierangelo Celle
			International and inter-American human rights law	Mattia Costa
University of Insubria	Law	5-Year Degree in Law	Human Rights, Religions and UN Agenda 20-30	Alessandro Ferrari, Giovanni Camilleri
University of L'Aquila	Law	BA In Legal Corporate Professionals	Theory of Interpretation and Fundamental Rights	Francesca Caroccia
	Political and social science	BA in Education Sciences and Civil Service	Protection of Fundamental Rights	Marilena De Ciantis
Link Campus University	Political and social science	MA in Strategic Studies and Diplomatic Science	International Organizations and Human Rights	Antonio Stango
		BA in Political Science and International Relations	Theory and Practise of Human Rights	

continued

University of Macerata	Political and social science	BA in Political Science and International Relations	Philosophy of Human Rights	Natascia Mattucci
	Law	MA in International Politics	Human Rights and Differences	Ines Corti
		MA in Global Politics and International Relations	International Human Rights	Laura Salvadego
			Courts and human rights	Benedetta Barbisan
University of Messina	Political and social science	MA in International Relations	International Organisations and Human Rights	Francesca Perrini
		MA in Social Services, Social Policies and Sociological Studies and Social Research	International Organisations and the Protection of Human Rights	Anna Pitrone
Sacro Cuore (Sacred Heart) Catholic University	Political and social science	BA in Politics and International Relations	International Protection of Human Rights	Monica Spatti
	Law	5-Year Degree in Law	Human Rights	Pasquale De Sena, Francesca De Vittor
University of Milan	Political and social science	BA in International Studies and European Institutions	International Protection of Human Rights	Ilaria Viarengo
		BA in Political and Government Science	Theory of Fundamental Rights	Alessandra Facchi
		BA in Legal Services	Protection of Human Rights	Stefania Leone, Benedetta Maria Cosetta Liberali
		BA in Social Science for Globalisation	Fundamental Rights (Jean Monnet course)	Davide Galliani
		MA in International Relations	International human rights law	Cesare Pitea
			Theories of Justice and Human Rights	Nicola Riva
			International human rights law	Federica Favuzza

continued

University of Milan	Political and social science	MA in Global Politics and Society	Globalization, social justice and human rights	Enzo Colombo
	Law	5-Year Degree in Law and MA in Sustainable Development	History of Human Rights	Filippo Maria Rossi
			EU law on business and human rights	Angelica Bonfanti
			Sociology of Human Rights and the Ombudsman	Marco Alberto Quiroz Vitale
University of Milan-Bicocca	Law	5-Year Degree in Law	International Protection of Human Rights	Gabriella Citroni
			Sociology of Fundamental Rights	Massimiliano Verga
			European Constitutional Law (Fundamental Rights)	Stefania Ninatti, Paolo Zicchittu
			Philosophy of Human Rights and Pluralism	Michele Saporiti
Bocconi University Milan	Law	5-Year Degree in Law	Civil liberties and human rights	Graziella Romeo
			Human rights	Giunia Valeria Gatta
Vita-Salute San Raffaele University Milan	History, philosophy, pedagogy and psychology	BA in Philosophy	Anthropology, Culture and Human Rights	Francesca Pongiglione
University of Modena and Reggio Emilia	Law	5-Year Degree in Law	Theory and Practice of Human Rights	Thomas Casadei
			Comparative Human Rights Law	Silvia Angela Sonelli
	Linguistics	MA in Languages for communication in international enterprises and organizations	(Digital) communication and human rights	Vincenzo Pacillo
University of Molise	Political and social science	BA in Policy and Administration	Fundamental Rights and Public Law	Hilde Caroli Casavola
University of Campania	Law	BA in Legal Services	Constitutional Law and Protection of Human Rights	Maria Pia Iadicicco

continued

University of Campania	Political and social science	MA in International Relations and Organizations	Human Rights and International Courts	Antonella Silvia Angioi
			Rights of the Person	Pasquale Femia
			Global justice and human rights	Federica Liveriero
		MA in International Relations and Organizations	International and European Protection of Human Rights	Antonella Silvia Angioi
Federico II University of Naples	Political and social science	BA in Political Science	International Protection of Human Rights	Rita Mazza
		5-Year Degree in Law	Procedures of International Protection of Human Rights	Francesco De Santis
			International Protection of Human Rights	Massimo Iovane
University of Naples "L'Orientale"	Political and social science	MA in International Relations	International Protection of Human Rights	Giuseppe Cataldi
		MA in International Studies	Protection of Human Rights in the European Union	Giuseppe Cataldi
University of Padova	Political and social science	BA in Politics, International Relations and Human Rights	Human Rights	Elena Pariotti
			Public Policy and Human Rights	Paola Degani
			Society, Religion and Human Rights	Andrea Maria Maccarini
			Economic Development and Human Rights	Mario Pomini
			International Protection of Human Rights	Paolo De Stefani
		MA in Government and Public Policies	Citizenship and Fundamental Rights	Costanza Margiotta Broglio Massucci
		Master's Degree in Human Rights and Multi-Level Governance	European Union Law and Human Rights	Paolo Piva

continued

University of Padova	Political and social science	Master's Degree in Human Rights and Multi-Level Governance	Human Rights and International Justice	Costanza Margiotta Broglio Massucci
			International Law of Human Rights	Paolo De Stefani
			Women's Human Rights	Paola Degani
			Culture, Society and Human Rights	Andrea Maria Maccarini
			Economic Globalization and Human Rights	Roberto Antonietti
			Human Rights Governance	Pietro de Perini / Petra Roter
			Human Rights Practice	Sara Pennicino
			Refugee Human Rights Protection	Antoine Pierre Georges Meyer
			Religions and Human Rights	Giuseppe Giordan
	History, philosophy, pedagogy and psychology	BA in Social and Workplace Psychology	Human Rights and Inclusion	Laura Nota
University of Palermo	Law	5-Year Degree in Law	Human Rights	Bruno Celano
			Human Rights	Giorgio Maniaci
			International Protection of Human Rights	Alfredo Terrasi
	Political and social science	MA in Social Services and Political Science	Human Rights	Giorgio Maniaci
		MA in Cooperation, Development and Migration	International Law: Fundamental Rights and Humanitarian Law	Alfredo Terrasi
			Human Rights: Theory and Policies	Serena Marcenò
University of Parma	Political and social science	MA in International and European Relations	International Protection of Fundamental Rights	Laura Pineschi

continued

University of Pavia	Law	5-Year Degree in Law	Constitutional Justice and Fundamental Rights	Francesco Rigano, Giuditta Matucci
			Legal Clinic in Human Rights and Social Inclusion	Giuditta Matucci
	Political and social science	MA in Economic Development and International Relations	Human Rights and International Justice	Carola Ricci
University of Perugia	Political and social science	Degree in Social Services	Public Law Institutions and Fundamental Rights	Alessandra Valastro
		BA in Sciences for Investigation and Security	Sociology of Fundamental Human Rights	Laura Guercio
		MA in International Relations	Sustainable development, global trade and social rights	Stefano Giubboni
	Law	MA in European Judicial Integration and Human Rights	Protection of Human Rights in the European Judicial Space	Simone Vezzani
			Legal Culture, Fundamental Rights and Migration Processes	Maria Chiara Locchi
			Fundamental Human Rights and Civil Procedure	Chiara Cariglia
			Human Rights Philosophy and Sociology	Roberto Paradisi
	History, philosophy, pedagogy and psychology	MA in Philosophy and Ethics in Relations	Religion and Human Rights	Silvia Angeletti
University for Foreigners of Perugia	Political and social science Communica-tions	BA in International Studies for Sustainability and Social Security	Multilevel protection of fundamental rights (laboratory)	Francesco Duranti
		BA in International, Intercultural and Advertising Communications	Human Rights Theory	Alessandro Simoncini

continued

University for Foreigners of Perugia	Political and social science Communica-tions	BA in International, Intercultural and Advertising Communications	Human Rights and Intercultural Communication	Alessandro Simoncini
University of Pisa	Political and social science	Degree in Social Services	Constitutional Law and Human Rights	Saulle Panizza
Guido Carli Free International University of Social Studies – LUISS	Law	5-Year Degree in Law	International Protection of Human Rights	Pietro Pustorino
	Political and social science	MA in International Relations	International Organization and Human Rights (A)	Cherubini Francesco
			International Organization and Human Rights (B)	Andrea Saccucci, Johannes Antonius Maria Klabbers, Elena Sciso
Maria SS. Assunta Libera University - LUMSA	Political and social science	Degree in International and Political Science	Fundamental Freedoms and Rights	Marco Olivetti
		MA in International Relations	International Law and Protection of Human Rights	Roberta Greco
Roma Tre University	Political and social science	BA in Political Science for Cooperation and Development	International Organisation and Protection of Human Rights	Cristiana Carletti
		BA in Historical and Territorial Sciences, and International Cooperation	International Organisation and Protection of Human Rights	Cristiana Carletti
		MA in International Studies	Theory of human rights	Francesco Maiolo
			Global economy and labour rights	Maria Giovannone
		MA in Public Administration	Constitutional Rights and Freedoms	Michela Manetti
	Law	5-Year Degree in Law	European Constitutions and Human Rights	Mauro Palma
			Constitutional Rights and Freedoms	Elisabetta Frontoni
			International Human Rights Law	Giuseppe Palmisano

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Roma Tre University	Law	5-Year Degree in Law	Protection of Personal Data and Fundamental Rights – Legal Privacy Clinic	Carlo Colapietro
			Welfare, Social Rights and Territory	Carlo Colapietro
			Prisoners' Rights and the Constitution – Legal Advice Service in Prisons	Silvia Talini
La Sapienza University of Rome	Political and social science	MA in Development and International Cooperation	Human Rights and Bioethics	Luca Marini
			European Union Law and Human Rights	Alessandra Mignolli
		MA in International Relations	International Human Rights Law	Luigino Manca
			European Constitutionalism and Fundamental Rights	Roberto Nania
	Humanities and social science	BA in Global Humanities	Law Bioethics and Human Rights	Ettore William Di Mauro
			International Law of Human Rights	Beatrice Ilaria Bonafè
Tor Vergata University of Rome	Political and social science	BA in Global Governance	Fundamental rights	Andrea Buratti
University of Salento	Law	Law	International and European Human Rights Law	Claudia Morini
	Political and social science	MA in Geopolitical and International Studies	Theory and Practice of Human Rights	Attilio Pisanò
University of Salerno	Law	5-Year Degree in Law	Human Rights	Alfredo d'Attorre
			Human Rights and Biolaw	Anna Malomo, Francesca Naddeo
			Rights of the Person	Anna Malomo, Federica Lazzarelli
			International Protection of Human Rights	Michele Nino

continued

University of Salerno	Political and social science	MA in Global Studies and EU	Fundamental Rights and Migration	Antonio Martone
University of Sassari	Humanities and social science	MA in Social Services and Policies	International Humanitarian Law and Protection of Human Rights	Maria Cristina Carta
	Law	5-Year Degree in Law	Protection of Human Rights in the European judicial area	Maria Cristina Carta
University of Siena	Political and social science	MA in International Studies	International Protection of Human Rights	Federico Lenzerini
		MA in Public and Cultural Diplomacy	Rule of law and human rights	Federico Lenzerini
University of Teramo	Law	BA in Legal Services	Rights of Man	Gianluca Sadun Bordoni
			Human Rights and Criminal Justice	Nicola Pisani
	Political and social science	MA in International Political Science	Comparative Justice Systems and the Protection of Fundamental Rights	Anna Ciammariconi
			Human Rights and International Humanitarian Law	Pietro Gargiulo
University of Turin	History, geography and philosophy	MA in Anthropology and Ethnology	History of the Rights of Man	Franco Motta
	Political and social science	MA in Sociology	Theories of Human Rights	Valentina Pazé
			Citizenship, Social Rights, Justice	Franco Prina, Valeria Ferraris
			Infant Culture and Children's Rights	Roberta Bosisio
		MA in Area & global studies for international cooperation	Fundamental rights in Latin America	Mia Caielli
		MA in International Studies	Human Rights and Immigration	Alessandra Algostino
			History of Human Rights	Franco Motta
			Fundamental rights in Europe	Joerg Luther

continued

University of Turin	Political and social science	MA in Social Policy and Services	Citizenship, Social Rights, Justice	Franco Prina, Valeria Ferraris
			Vulnerable People and the Protection of Rights	Maurizio Riverditi, Joelle Long
		MA in Asian and African Language and Civilizations	International Humanitarian Law for the Protection of Human Rights	Edoardo Greppi, Andrea Spagnolo
			European Convention on Human Rights	Ludovica Poli
		MA in European Law	Strategic litigation: Human Rights legal clinic	Andrea Spagnolo, Ludovica Poli
University of Trent	Political and social science	BA in International Studies	International Relations and Human Rights	Alessia Donà
		MA in European and International Studies	Human rights and natural resources under international law	Marco Pertile, Lamberto Zannier
	Law	BA in Comparative, European and International Legal Studies	International and Supranational Protection of Fundamental Rights	Roberto Toniatti, Marta Tomasi
University of Trieste	Law	5-Year Degree in Law	Constitutional Protection of Fundamental Rights	Gian Paolo Dolso
University of Udine	Law	5-Year Degree in Law	Theory of Human Rights	Giovanni Turco
Carlo Bo University of Urbino	Political and social science	MA in Management of Policy, Social Services and Intercultural Mediation	Fundamental Rights: History, Theory and Politics	Domenico Scalzo
			Equal Opportunity Rights	Luciano Angelini
Ca' Foscari University of Venice	Political and social science	MA in Work, Social Citizenship and Interculturality	Fundamental Rights and Privacy	Roberto Senigaglia
			Human Rights and Immigration	Giuseppe Pascale
University of Verona	Political and social science	MA in Social Services in Challenging Environments	Social and Citizenship-related Rights.	Alberto Mattei, Giorgia Anna Parini
			Protection of Fundamental Rights	Stefano Catalano

Source: elaboration by the *2021 Yearbook* research and editorial committee based on data from the prospectuses of each university.

Doctoral programmes (academic year 2020-2021)

University	Name	Area of scientific discipline
University of Camerino, School of Advanced Studies	Legal and Social Sciences-Curriculum Fundamental rights in the global society	M-STO/02; M-STO/04; M-DEA/01; M-FIL/03; M-FIL/06; IUS/04; IUS/08; IUS/09; IUS/13 - IUS/21 SECS-P/01; SECS P/02; SECS-P/04; SPS/01; SPS/02; SPS/04; SPS/06; SPS/07; SPS/11; SPS/12
University of Florence	Law - Theory and History of Law – Theory of Human Rights and Society, Genealogy and Perspectives of Legal Thought	IUS/18, IUS/19, IUS/20
University of Padova, Western Sydney University (Australia), University of Zagreb (Croatia), University of Nicosia (Cyprus)	Joint Ph.D. Degree in Human Rights, Society, and Multi-level Governance	IUS/13: IUS/20; IUS/21; SPS/04; SPS/08; SECS-P/01
University of Palermo	International Doctorate in Human Rights: Evolution, Protection and Limits	IUS/01, IUS/09, IUS/12, IUS/20, SPS/02, IUS/13, IUS/19, IUS/10, SPS/09, SECS-P/01, IUS/08
Sant'Anna School of Advanced Studies of Pisa	Human Rights and Global Politics: Legal, Philosophical and Economic Challenges	SPS/01, SPS/06, IUS/13, IUS/03, IUS/14, SPS/04, SECS-P/02, SECS-P/06, SECS-P/08
La Sapienza University of Rome	Public, Comparative and International Law: Programme in International Order and Human Rights	IUS/13, IUS/14, IUS/08, IUS/07, IUS/01
University of Macerata	Global studies: justice, rights, politics	IUS/21, M-FIL/03, SPS/01, SPS/04, SPS/09, IUS/13, SPS/03, IUS/03, SECS-P/06,SECS-P/08
Federico II University of Naples	Human Rights. Theory, History and Practice	IUS/08, IUS/09, IUS/16, IUS/17, IUS/18, IUS/19, IUS/20
Aldo Moro University of Bari	Legal Principles and Institutions between Global Markets and Fundamental Rights	IUS/03, IUS/04, IUS/07, IUS/15, IUS/01, IUS/08, IUS/09, IUS/10, IUS/12, IUS/21, IUS/13, IUS/14, IUS/17
University of Campania	Internationalisation of Legal Systems and Fundamental Rights	IUS/01, IUS/07, IUS/04, IUS/08, IUS/09, IUS/10, IUS/13, IUS/15, IUS/16, IUS/17, IUS/20, IUS/21

Source: elaboration by the *2021 Yearbook* research and editorial committee.

Master's degree programmes - postgraduate

University	Name	Level
University of Bologna	Human Rights, Migration and Intercultural Inclusion	I
	Constitutional Justice and Human Rights	I
	Democracy and Human Rights for South East Europe	I
University of Cassino and Southern Lazio	Integrated Project Management for Interventions for the Protection of Children's Rights and the Fight against Educational Poverty	I
University of Ferrara	Protections and Rights of Minors	I
Global Campus of Human Rights (41 European partner universities)	European Master's programme in human rights and democratisation E.MA	I
University of Milan-Bicocca	Rights of the Child and Adolescents (Interdisciplinary Master's)	I
University of Pisa	Internet Ecosystem: Governance and Rights	II
La Sapienza University of Rome	"Maria Rita Saulle" International protection of human rights	II
Sant'Anna School of Advanced Studies of Pisa	Human rights and conflict management	I
Aldo Moro University of Bari	Peace Ethics, Education to Health Rights and Universal Rights. Protection of the Person and the Environment in the Global Village	I
Italian Society for International Organisation (SIOI)	International relations and international protection of human rights	-

Source: elaboration by the *2021 Yearbook* research and editorial committee.

Other university networks that deal with peace and human rights issues are: at the international level, the *Global Campus of Human Rights* (among the hundred partner universities, seventy-four of which are full members, three are Italian: Padova, Venice - Ca' Foscari, Bologna), the *Association of Human Rights Institutes* (AHRI, fifty-five Member Institutes, four Italian); and at the national level, the Italian Network of UNESCO Chairs (with Chairs at thirty-three universities), and the newly-instituted Network of Universities for Peace (RUNIPACE, fifty-seven universities).

Sub-national Human Rights Structures*

I Peace Human Rights Offices in Municipalities, Provinces and Regions

At the sub-national level, especially by virtue of the inclusion of the "peace human rights norm" in thousands of municipal, provincial and regional statutes and of the adoption of dedicated regional laws on this topic (see Part I, Italian Law, III), Italy has a number of local consultancies, offices, departments, bureaux and centres for human rights, peace, equal opportunity, development cooperation, fair trade and international solidarity. From a subsidiary point of view, these structures contribute to implementing the Agenda 2030 for sustainable development, with particular reference to Goal 5 (Gender Equality), Goal 11 (Sustainable Cities and Communities) and Goal 16 (Peace, Justice and Strong Institutions). There were no new institutional structures in 2020.

II Ombudspersons in the Italian Regions and Provinces

The Ombudsperson is a guarantee body with pervading investigative powers and the power to publish its own conclusions, assigned the task to protect citizens from the ineffectiveness of public administration, to improve public administration, as well as ensuring and fostering the good performance and impartiality of administrative initiatives according to the principles of legality, transparency, efficiency, effectiveness and equity.

In comparison to all other European Countries, a law establishing the national Ombudsperson has never been approved in Italy. The State instead has a regional (or autonomous province) level arrangement, which results in discrepancies in services across the country (see, in this Part, Sub-national Human Rights Structure, III).

In 2020, there were 18 incumbent Ombudspersons for the regions or Autonomous Provinces (and guarantors which meet the criteria for Ombudspersons): Abruzzo, Aosta Valley, Basilicata, Campania, Emilia-Romagna, Friuli-Venezia-Giulia, Lazio, Liguria, Lombardy, Marche, Molise, Piedmont, Sardinia, Tuscany, Umbria and Veneto, as well as the Autonomous Provinces of Bolzano and Trento. The region of Calabria has never appointed an Ombud-

* Pietro de Perini, Fabia Mellina Bares

sperson and the region of Apulia has not put in place an instituting law for the role. No legislative provision has been made for the role by the regions of Sicily and Trentino-Alto Adige (where, however, the region has delegated full responsibility in their respective territories to the Ombudspersons of the Autonomous Provinces).

The role of Ombudsperson was strengthened by the approval of legislative decree 97/2016 (Reviewing and simplifying provisions for preventing correction, for publicity and for transparency), the so-called Italian Freedom of Information Act (F.O.I.A.), on general civil access, as well as law 24/2017 (Provisions on the safety of treatments and the person being assisted, as well as on the professional responsibility of health care) within which art. 2 gives the Regions the power to entrust the task of *Guarantor for the right to health* to Regional Ombudspersons.

Alongside other guarantor figures working for the rights of children and detainees at a regional level, the regional Ombudspersons contribute to Italy's efforts to build worldwide secure institutions for peace, justice and human rights, pursuant to Goal 16 of the Agenda 2030, particularly Target 16.10 (ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements).

III National Coordinating Body of Ombudspersons

The National Coordinating Body of Regional and Autonomous Provinces of Bolzano and Trento Ombudspersons is an associative body working to harmonise and enhance the institutional role of the Ombudsperson in Italy by promoting initiatives (often in collaboration with other institutions) to spread awareness on their competences on specific issues, and for sharing and discussing best practices.

The Coordinating Body is made up of the incumbent Ombudspersons in the Regions and the Autonomous Provinces. It operates the office of a collectively elected Ombudsperson, made up of a Chair and two vice chairs. In 2019, the role of Chair of the Coordinating Body was covered by Andrea Nobili, Ombudsperson of Marche Region, assisted by Vice Chair Enrico Formento Dojot, Ombudsperson of the Aosta Valley, and Sandro Vannini, Ombudsperson of Tuscany.

The Coordinating Body has its headquarters in Rome at the Network of the Presidents of the Legislative Assemblies of the Regions and the Autonomous Provinces. It has regular meetings held in Rome, and further meetings are held in rotation in various Italian cities to enhance its presence and experience across the territory.

Given the lack of a National Ombudsperson, the National Coordinating Body participates in the European Network of Ombudsmen, where issues of shared interest are discussed. The Coordinating Body represents the Italian Civil Defence through a liaison officer and can intervene on the mandate of the European Ombudsperson within the State central administration.

During the International Ombudsman Institute workshop, held on 28 and 29 March 2019 in Aosta, the *Dèclaration d'Aoste* (Aosta Declaration) was approved, aimed at encouraging the Italian authorities to establish a National Ombudsperson.

The Body's activities were heavily influenced by the COVID-19 pandemic. Meetings of the Coordinating Body took place predominately online. The issue of the lack of an Ombudsperson in three regions was the focus of many meetings: to this end, the assembly adopted the *Ancona Recommendations*, signed on 14 October 2020, aimed at raising awareness on the issue within competent institutions.

In 2020, monitoring with regard to the figure of the healthcare authority continued. Pursuant to art. 2 of law 8 March 2017, No. 24, regions and autonomous provinces can assign all relative functions to the Ombudsperson. To this end, in 2019, a working table of representatives of the Coordinating Body and the Conference of the Presidents of the Regions and of the Autonomous Provinces; the working table produced a shared draft of *Guidelines,* the rationale of which lay in the need to equip each individual Region and Autonomous Province with some kind of essential levels of services, whereby the definition of a basic common denominator would guarantee all citizens the fundamental right to health, regardless of the situation within the territory. The *Ancona Recommendations* invited regions to delegate all functions of the healthcare authority to the Ombudsperson.

IV Network of Ombudspersons for Children and Adolescents

Since the 1980s, the role of Public Guardian of Children and Adolescents has existed within the regions, autonomous provinces and municipalities. The role was then renamed Ombudsperson, with the same aim of monitoring the implementation of the International Convention on the Rights of the Child and other international instruments (as well as domestic laws) on children's rights and their application within the Italian system.

In 2020, there were nineteen Ombudspersons for Children and Adolescents for the Regions or Autonomous Provinces (Apulia, Basilicata, Calabria, Campania, Emilia-Romagna, Lazio, Lombardy, Piedmont, Sardinia, Sicily, Tuscany and the Autonomous Provinces of Trento and of Bolzano); others have competences in other fields, such as the ombudsperson and/or public advocate of the rights of persons with restricted personal freedom (Aosta Valley, Friuli-Venezia Giulia, Liguria, Marche, Molise and Veneto). Calabria and Sardinia are expecting the appointment of a new Ombudsperson after the end of the previous guarantor's mandate.

With the approval of law 12 July 2011, No. 112, the role of National Ombudsperson for Children and Adolescents was introduced (see, in this Part, National Bodies with Jurisdiction over Human Rights, VII, D.), and with it, the formal establishment of the Network of Ombudspersons for Children and Adolescents, made up of Ombudspersons from the regions and the autonomous provinces (or similar figures) (art. 3). The law stated that the Ombud-

sperson would "guarantee suitable forms of collaboration" with the territorial Ombudspersons, given the "numerous requirements for the Ombudsperson to be independent, autonomous and exclusively competent on issues about children and adolescents". To this end, the Network of Ombudspersons was established, with the aim of promoting "common lines of action for all regional Ombudspersons" (to be adopted unanimously) and of "exchanging data and information on the situation of minors" (art. 3, para. 6 and 7 of the instituting law). The Network is chaired by the National Ombudsperson and is equipped with an internal regulation system that establishes its function and reiterates the key role that the Provincial and Regional Ombudspersons carry out. Moreover, it underlines that the Regional and Provincial Ombudspersons are not outlying offices of the National Ombudsperson but are working offices established by regional or provincial laws in their own right, with their own requirements for the nomination, powers held and competences. The Network meets at least twice a year upon the convocation of the National Ombudsperson or on the majority request of the territorial Ombudspersons (art. 7 of the Prime Ministerial Decree 20 July 2012, No. 168). The National Ombudsperson has expressed the need to clearly define the role and competencies of territorial Ombudspersons to avoid overlapping competencies or duplicating measures carried out by the National Authority. (2019 Report of the National Ombudsperson in Parliament).

Law 7 April 2017, No. 47 (Provisions for protection measures for unaccompanied foreign minors) gave the Territorial Ombudspersons specific competences (art. 11), establishing the stipulation of specific Memoranda of Understanding with the Presidents of Juvenile Courts. It aims at creating a list of private citizens (selected and adequately trained by the Regional Ombudspersons for Children and Adolescents and those of the Autonomous Provinces of Trento and Bolzano) to become guardians of unaccompanied minors. This had already been a topic of discussion and reflection within the Network before this law had entered into force.

The Network of Ombudspersons for Children and Adolescents did not meet in 2020.

V Network of territorial Ombudspersons for Persons Detained or Deprived of their Liberty

Since 2003, regions, provinces and municipalities with prison institutions or any place where persons are deprived of their liberty for legal, administrative or health reasons have established Ombudspersons for persons detained. In most cases, this is an ad hoc figure, whereas in others, this role is given to Ombudspersons or to other figures with various competences (Ombudspersons on the rights of persons or similar).

Currently, there are sixteen regional Ombudspersons in office, in addition to those of the Autonomous Provinces of Trento, four Provinces, one metropolitan area and forty-nine Municipalities.

Other than the various competences recognised at the territorial level by regional laws or other constituent decrees, national laws recognise that territorial Ombudspersons are able to access prevention and penal institutes and juvenile criminal institutes (art. 67(1)-lett. L-*bis*, l. 26 July 1975, No. 354), police force security cameras (art. 67-*bis*) in the repatriation centre for foreigners deprived of their residency documents within national borders (art. 19(3), l.d. 17 February 2017, No. 13, as amended by conversion law 13 April 2017, No. 46). In the prison sector, complaints made by detained persons are directed to the territorial Ombudsperson (art. 35, l. 26 July 1975, No. 354), in order to ensure confidentiality of their correspondence (art. 18-*ter*(2)). Just like national Ombudspersons, the Ombudspersons for Persons Detained or Deprived of their Liberty can conduct interviews requested by a prisoner (art. 18(2)).

With l.d. No. 130 of 21 October 2020, this right was extended to detained persons within Reception Centres for Asylum Seekers (CPR). In particular, art. 3 of decree 130 contains amendments to the Consolidated Immigration Law (lgs.d. 25 July 1998, No. 286). The right to complain to the national, regional and local Ombudsperson is also recognised to these detainees.

Since 2008, the various Ombudspersons for Persons Deprived of their Liberty named by national territorial bodies met in a national network (since 2018: Network of territorial Ombudspersons for Persons Detained or Deprived of their Liberty, with offices at the Conference of Presidents of the legislative assemblies of Regions and Autonomous Provinces). Since its institution, national Ombudsperson have been invited to participate in the meetings (see, in this Part, National Bodies with Jurisdiction over Human Rights, V, E). Pursuant to l.d. 23 December 2013, No. 146, art. 7, the Ombudsperson for persons detained or deprived of their liberty promotes and fosters collaborative relationships with territorial Ombudspersons.

With note verbale No. 1105, dated 25 April 2014 addressed to the UN Subcommittee on Prevention of Torture, the Permanent Representative of Italy to the United Nations described the National Preventive Mechanism, pursuant to the Optional Protocol to the Convention Against Torture (OPCAT, in force in Italy since 3 May 2013), as coordinated by the Ombudsperson for the rights of persons detained or denied of their liberty and the regional and local Ombudspersons.

In 2020, highly impacted by the emergency COVID-19 pandemic, in addition to monitoring detention places and places of civil defence where persons are detained, the territorial Ombudspersons, in conjunction and working with the national Ombudsperson, worked consistently to protect the fundamental rights of persons deprived of their liberty and for the effectiveness of the administrators responsible for their custody and care.

The activity was characterized by various actions, from continued extensive monitoring of each in their own area of competence to appeals to Parliament signed by the Network of Ombudspersons at the beginning of examining the amendments to law-decree 137/2020 (the so-called "refreshment decree"), so that the parliament adopts all appropriate measures to significantly reduce the number of detainees in prisons. This measure should start with that prisoners

that the Ombudsperson has already identified by extensively and rationally applying the same provisions envisaged by the decree, in the hope that they will benefit the most vulnerable, without sacrificing social security.

In addition to the issue of overcrowding, the Ombudsperson focused on the right to visits (the biggest use of internet and videocalls), on remote learning and on vaccinations in the document "Inside and Outside Prison. The need for protection from the fall in in-person attendance and vaccine priority" published in December 2020.

VI National Coordinating Body of Local Authorities for Peace and Human Rights

Founded on 12 October 1986, the National Coordinating Body of Local Authorities for Peace and Human Rights is the largest Italian network of municipalities, provinces and regions involved in promoting peace and human rights. The Coordinating Body is chaired by Andrea Ferrari and directed by Flavio Lotti.

Among the many activities to take place in 2020, the following are particularly significant within framework of the commitment of the Coordinating Body to support the increase of human rights education, and of citizenship and peace:

- organising the "Human Chain for Peace and Brotherhood" held on Sunday 11 October 2020 along the road between Perugia and Assisi. The aim of the event was to symbolise the participants' commitment to repair the fabric of society and rebuild a community of fraternity and mutual care following the COVID-19 pandemic. The initiative took place at the end of a three-day cycle of events: "Time for Peace - Time to Care" (Perugia 9-11 October 2020). The National Coordination of Local Governments for Peace and Human Rights also held a meeting during this event (10 October).
- on 13 October 2020, on the launch of the national programme for schools "Let's do a deal: let's not waste the younger generations' positive energy". The programme aimed at a) accepting Pope Francis' invitation to recreate the Global Compact on Education, starting to build functioning "Territorial Education Pacts" with joint participation of schools, Municipalities, families and social and cultural organisations; b) promoting the teaching of civil education in schools, so that each child can develop a sense oof belonging to their community and become free, responsible and knowledgeable citizens; c) offering new educational opportunities to pupils and students focused on developing the skills for active citizenship and digital skills. It also aims to promote a culture of human rights and responsibility; d) working together to tackle educational challenges of the next decade (2020-2030), collaborating to deliver the 10-year programme of training, research, civil education and the building of the future "Citizenship 2030", promoted within the initiatives run by the Italian Network of Schools for

Peace with the view of implementing the UN Agenda 2030 for sustainable development.

Across the year, the National Coordinating Body has also supported:

- the appeal to City Mayors and Provincial and Regional Presidents to approve an agenda supporting the United Nations on the occasion of its 75th anniversary.
- organising online of the "Rights and Responsibilities" Grand Assembly for Human Rights Day (10 December 2020). The initiative included a lesson on human rights carried out by pupils and students from various schools around Italy (primary and secondary schools). The Grand Assembly was created in collaboration with the Table of Peace and University of Padova Human Rights Centre.
- promoting and publicising the document "Towards the Economy of Francesco", written by the Franciscans of the Sacred Convent and coordinated by the National Coordinating Body, the Sacred Convent of Saint Francis of Assisi, the Ethic Finance Foundation (*Fondazione Finanza Etica* - Banca Etica) and the Table of Peace, in collaboration with the UN Task Force on Social and Solidarity Economy and the ILO.

VII Archives and Other Regional Projects for the Promotion of a Culture of Peace and Human Rights

Besides the "Pace Diritti Umani - Peace Human Rights" Archive of the Region of Veneto, established by r.l. 18/1988 and managed by the University of Padova Human Rights Centre (see this Part, Region of Veneto, X), there are other similar projects set up by Italian Regions and Autonomous Provinces to foster the promotion and dissemination of a culture of human rights and peace.

The "Peace and Human Rights" project in the Region of Emilia-Romagna was set up by the Regional Council in collaboration with the Department for Social Policies, Immigration, Youth Projects and International Cooperation and the Regional Governments Management Control and Statistics Systems Department. The project has been managed by the Europe Direct Centre of the Legislative Assembly of Emilia-Romagna since 2013 and follows the principles laid out in r.l. 24 June 2002, No. 12 (Regional interventions for cooperation with developing countries and countries in transition, international solidarity and the promotion of a culture of peace). It aims to support activities described in the law. The commitment of the Legislative Assembly is illustrated in the page "Peace and Rights" *(Pace e Diritti)* of the Europe Direct Centre of Emilia-Romagna, which also provides citizens with a repository of documents and videos on the topic (www.assemblea.emr.it/europedirect/pace-e-rights).

In 2020, the commitment of the regional legislative assembly of Emilia-Romagna for the defence and promotion of human rights continued through supporting and organising numerous events and initiatives at the Europe

Direct Centre. Particularly noteworthy was the educational project "Rights are born" *(Diritti si nasce)*, and the #PACEeDIRITTI (*#PEACEandRIGHTS*), a database aimed at broadcasting news articles on human rights and peace in Emilia-Romagna via social network and the XVII edition of the "René Cassin" graduation prize (2019/2020) on the subject of fundamental rights and human development for professional training.

The Trentino for Peace and Human Rights Forum (*Forum Trentino per la pace e i diritti umani*) standing body was established in 1991 at the behest of the Provincial Council of Trent with p.l. 10 June 1991, No. 11 (Promoting and disseminating the culture of peace). Website: http://www.forumpace.it/.

The annual theme approved during the Forum Assembly on 19 February 2020 was: "Restarting from P: Target PEACE" (*Ricomincio da P - obiettivo Pace*). This issue was developed around the Agenda 2030 priorities and is presented as a unifying plan to promote the rebuilding of a culture of peace amid grave international crises and old and new forms of conflict and violence. On this issue, the Forum announced a call for civil society associations with the objective of creating a shared calendar of interconnected actions and initiatives to strengthen and create positive synergy among various stakeholders in Trentino.

Region of Veneto*

The Region of Veneto has operated organically for the promotion of human rights, the culture of peace and international cooperation since 1988, the year in which the first regional law on such issues was adopted in Italy (r.l. 30 March 1988, No. 18). In 1999, r.l. 18/1988 was replaced by the current r.l. 16 December 1999, No. 55, on "Regional measures for the promotion of human rights, a culture of peace, development cooperation and solidarity and then with the current r.l. 21 June 2018, No. 21 (Regional intervention for the promotion of human rights and sustainable development cooperation)".

With r.l. 24 December 2013, No. 37, the Region established the post of *Regional Ombudsperson for the Rights of the Person* which integrates the functions of the Ombudsperson, of the Ombudsperson for Children and Adolescents (both created in 1988 and working for the implementation of the aforementioned r.l. 37/2013), as well as those of promotion and protection of the rights of persons deprived of their liberty.

In the context of the newly constituted Regional Government following the elections on 20-21 September 2020, issues concerning human rights have moved from the responsibility of the Healthcare, Social Services, Health Planning and Coordinating Authority, relations with the Regional Council, to the Territory, Culture, Security, Migratory Flows, Hunting and Fishing Authority, the head of which is Cristiano Corazzari. There has been no change in the measures and activities concerning international relations and development cooperation, which are still overseen directly by the Regional Governor, Luca Zaia.

Art. 2 of the new r.l. 21/2018 commits the Veneto region to promoting and sustaining the following within the territory:

a) cultural, informative, awareness, research, training and education initiatives regarding human rights, fundamental freedoms and sustainable development cooperation;
b) collecting, sorting and disseminating studies, research, publications, multi-media and documents produced in regional, national and international headquarters, in relation to other databases, on the topic of promoting and human rights and sustainable development cooperation;
c) database of human rights and sustainable development coordination organisations working in Veneto;

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* Pietro de Perini, Fabia Mellina Bares

d) participating […] in projects on development cooperation, in the field of the application of public development cooperation [...] including participating in the cooperation programmes of the European Union.

To this end, the law institutes the Regional Table on human rights and sustainable development cooperation (art. 5) with advisory status on the regional programming and on consultancy concerning regional institutions. It promotes and supports the Venice Foundation for Research on Peace (art. 8) and the work of the European Commission for Democracy through Law (*Venice Commission*) of the Council of Europe (art. 7). The regional infrastructure for peace and human rights also includes the Commission for achieving equality between men and women, the Regional Observatory on Immigration, and the Peace Human Rights Archive (established by law 18/1988).

By way of r.l. 28 December 1998, No. 33, the Region promotes and financially supports the European Master's degree Programme in Human Rights and Democratisation (E.MA), located in Venice. With the adoption of r.l. 22 January 2010, No. 6, the Region has recognised the social and cultural value of fair trade, proclaiming its support for the organisations which operate in this sector.

I Department for International Relations, Communications and SISTAR

The Department is in charge (among other things) of implementing r.l. 21/2018. The organisational unit "International Cooperation", headed by Luigi Zanin, plays a central role in the management of human rights related activities.

The Department is responsible for various international initiatives undertaken by the Region, including: managing international relations; signing Memoranda of Intesa between national and foreign institutions; participating in international bodies and initiatives; participating in the European Grouping of Territorial Cooperation *"Euregio Senza Confini"*; programming and/or managing regional interventions on international solidarity; fair trade and human rights; culture of peace; promoting equal opportunities; and protecting linguistic minorities. It houses the Regional Veneto Committee for UNICEF.

In 2020, as a consequence of the interruption of school activities due to the emergency measures to contain and manage the COVID-19 pandemic, the Department deferred the completion date of the educational courses on human rights and the culture of peace in primary and secondary schools in Veneto. These courses had been allocated funds of €70,000 for one hundred vouchers for the academic year 2019-2020 (see *Yearbook* 2020, p. 171). The "International Cooperation" organisational unit sent out a questionnaire to assess satisfaction and gather opinions and suggestions about these educational vouchers, focusing on the offer of the management to carry out online meetings with class groups.

II Regional Table on Human Rights and Sustainable Development Cooperation

The Regional Table was established pursuant to art. 5 of r.l. 21/2018. It is responsible for consulting on regional programmes and bodies on human rights, development cooperation and fair-trade issues.

With decree of the Director of the "International Cooperation" organisational unit No. 121 of 9 September 2020, the procedure to establish the Regional Table on Human Rights and Sustainable Development Cooperation for the next three-year period was launched.

The 2020 Annual Implementation Plan for events promoting human rights and sustainable development was not adopted (see *Yearbook 2020*, p. 171) for initiatives supported by the 2019 Plan).

III Regional Coordinating Table on Preventing and Combatting Violence against Women

With r.l. 23 April 2013, No. 5 (Regional interventions to prevent and combat violence against women), a Regional Coordinating Table on Preventing and Combatting Violence against Women was established in the Regional Council. To implement this law for 2020, the Region of Veneto financed specific projects to promote autonomy for women in anti-violence centres and shelters, the so-called "escape routes out of violence", (these include specific individual projects to promote independence for women, women with children, and victims of violence within these structures). The total regional allocation was split among the twenty-five anti-violence centres and the twenty-three institutionally recognised shelters.

With respect to state provided resources for the "Fund for Policies concerning Equal Opportunities and Rights" by the Region of Veneto, in 2020, funds were allocated to: support initiatives from anti-violence centres, anti-violence contact points and pre-existing shelters; implement educational vouchers for human rights courses on equal dignity, recognising and respecting the rights of women for primary, middle and senior schools in Veneto. The aim is to raise awareness on the issue of violence against women, and therefore to prevent and combat it in the region; provide finance to the Municipality to cover the reception costs of women and children victims of violence (also in emergencies), via the regional Committee of City Mayors; fund referral centres for abusive men.

IV Venice Foundation for Research on Peace

The Foundation was established by r.l. 18/1988 and reconfirmed first by r.l. 55/1999 and subsequently by r.l. 21/2018. The Foundation's main objective is to carry out research in collaboration with national and international institutions on issues related to security, development and peace.

In 2019, the Foundation, other than continuing to promote the project *Blind Spots* (see *Yearbook 2016*, p. 119), organised the 11th Annual Symposium of *Research Network on the History of the Idea of Europe* (held from 24 June to 3 July 2020) and the publication of the fifth volume of the series "Europe, One Hundred Years on from the First World War: History, Politics and Law" (edited by Rolf Petri and Maria Laura Picchio Forlati).

V Human Rights Authority

The Human Rights Authority of Veneto was established by regional law 24 December 2013, No. 37. The first and current Human Rights Authority is Mirella Gallinaro, who was appointed in 2015 and re-elected for her second three-year mandate in 2018.

Regionally, the Human Rights Authority carries out the role of ensuring the rights of physical and legal persons towards public administration and public service management via non-judicial promotion, protection and mediation procedures; furthermore, it carries out the role of promoting, protecting and facilitating the pursuit of the rights of children and adolescents and of the rights of persons deprived of their personal liberty.

Regarding the role of the Human Rights Authority, the Ombudsperson receives complaint reports from individuals and associated subjects, reporting mismanagement or abuse by public administration who have offices in the region (including individuals who have approached public administration without getting any results, or have obtained unsatisfactory results), carrying out guidance, mediation, solicitation and recommendation activities for administration bodies; furthermore, it rules on complaint reports to review bans (either explicit or implied) or to postpone access to administrative documents under art. 24 of law No. 241 of 1990 as well as review requests to restrict civic access under legislative decree No. 33 of 2013, amended and integrated by legislative decree No. 97 of 2016. All complaint reports are concluded with a motivated response.

In 2020, there were 441 complaint reports presented of which 168 were review requests (one environmental access and eleven civic accesses). The remaining complaint reports concerned construction, welfare, administrative fines, personal services, taxes and levies, region and environment, urban planning, and one request on exercising substitute power pursuant to art. 30 para. 10 of regional law 23 April 2004, No. 11 and successive amendments. It should be noted that in Veneto, in comparison to other regions, the regional legislator has not given the Human Rights Authority the role of "Ombudsperson for the right to health" pursuant to art. 2(1) of law 24/2017 (Provisions on safety of treatments and assisted persons, as well as on professional responsibility of health professional workers).

In 2020, institutional listening activities regarding promoting and protecting minors got 193 requests concerning both private individuals and public services and institutions.

Across the year, the Ombudsperson continued with the consultancy and support work for guardians carrying out their roles and provided the judicial authorities with volunteers who were willing to undertake the role of guardians for the protection of minors. In 2020, the Human Rights Author-

ity of Veneto received 327 guardianship requests by the judicial authorities (both ordinary and juvenile courts). Due to the COVID-19 pandemic, the Human Rights Authority did not carry out any specific guardianship training programmes.

In the management of pandemic, the partnership between the Human Rights Authority and the Ombudsperson for children and adolescents proved invaluable, allowing the publication of joint documents and press statements to bring the situation to the attention of the Government

In 2019, furthermore, the Human Rights Authority of Veneto continued to participate in various projects (ongoing from 2018) and organised new initiatives. In some cases, it was a partner in exclusively local initiatives, in others, it was involved in developing or implementing comprehensive projects at a local/regional level (national; international/national). In particular:

- *AMIF Fund:* national project to monitor the legal guardianship of unaccompanied foreign minors. From September to November, a series of meetings to provide updates were organised for health care workers, municipalities administrators and private social workers in Veneto: "Minors and protection: standards, practices and resources in the region". The initiative comes within a national project to monitor volunteer legal tutors for unaccompanied foreign minors, managed by the Ombudsperson pursuant to art. 11 of law 47/2017 and financed via the AMIF fund (Asylum, Integration and Migration Fund 2014 - 2020) of the Ministry of the Interior. Partners of the project include: the National Coordination Community of Reception (CNCA), the NGO *Avvocato di strada* (street lawyers) and the Don Calabria institute. The Human Rights Authority of Veneto was a reference point for the inter-institutional project management and coordination of implementing these initiatives in Veneto.
- *Terreferme project* promoted by CNCA and UNICEF Italy, aiming at facilitating the placement of unaccompanied minors coming from the emergency immigration structures in Palermo in foster families in the Veneto and Lombardy Regions (who have signed up to the family reception network of the CNCA. This is the third year that this experimental project has run.

In Veneto in 2020, a new training programme took place (online due to the emergency COVID-19 pandemic) targeted at families prepared to support or foster to unaccompanied migrant children and at public and private social operators working within the welfare and reception system. The training programme was carried out in collaboration with the Human Rights Authority and with the patronage of the Veneto Association of Social Workers.

The Ombudsperson's role is to protect the rights of detainees in prison institutions, in structures managed by Juvenile Justice Centres (juvenile penal institutes and first reception centres), in Immigration detention, in health structures (when dealing with compulsory medical treatment) and also of people deprived of all of personal freedoms. To fulfil this role, the Ombudsperson carries out a non-judicial role and works with mediation, persuasion, facilitation, orientation, solicitation and recommendation tools. It undertakes all initiatives aimed at ensuring that the services that are inherent to the right to health, to improving the quality of life, to education and professional training, and to social and work re-insertion are effectively carried out.

Although 2020 was heavily affected by the COVID-19 pandemic, there were 105 complaint reports from imprisoned person opened: thirty-nine concerning the Rovigo correctional facility (CC); twenty-four on the prison house of Padova (CR); eleven on the Vicenza CC; eight on the Padova CC; eight on the Treviso CC; three on the Belluno CC; two on the Venice CC; two on the Verona CC; one on the Venice CR and seven complaint reports from detainees in institutes outside the region, in alternative measures, or in situations in which the person's freedom has been generally restricted.

However, 2020 proved a particular active and effective year for the Permanent Inter-institutional Observatory for healthcare in prison, which aims to encourage various institutional bodies to accept measures to respond as effectively as possible to the health needs within prisons, in light of current standards of care. The Observatory is made up of representatives of the management of the Local Heath Authority in each main city of the provinces, the Department of Prison Administration, the Juvenile Justice Centre, the cognition magistrature, the Bar Association, the Inter-district External Prosecution Office, the president of the Surveillance Court and the Human Rights Authority.

Given the serious and complex situation brought about by the COVID-19 pandemic, the Observatory met every week and worked out specific guidelines for regional health and prison institutions "Managing COVID-19 inside Prison Institutes", approved in April 2020 validated by the Regional Department on Prevention. The guidelines were subsequently updated in July and again in November.

Finally, the Authority is a member of the National Coordinating body of Ombudspersons for the Regions and Autonomous Provinces, of the National Conference for ensuring the Rights of Children, and of the Network of territorial Ombudspersons for Persons Detained or Deprived of their Liberty.

VI Regional Commission for Equal Opportunities between Men and Women

The Commission was established by r.l. 30 December 1987, No. 62, and it is the regional consultative body on gender policies for the actual implementation of the principles of equality and equal opportunities enshrined in the Constitution and Regional Statute. The Commission was established at the Veneto Regional Council and is chaired by Elena Traverso.

The main task of the Commission is to investigate and research the condition of women in Veneto, with reference to issues involving employment, labour and professional training and to disseminate information on these areas. At the same time, the Commission respects its commitment to being present on the ground and to developing new synergies with all the actors and forces involved to promote and support the realisation of equal opportunities in the social, political and economic life of the population of Veneto. It may offer opinions on the current state of implementation of laws and on bills, as well as drawing up proposals of its own. The Veneto Equal Opportunities Commission conducts its mission in contact with other Commissions at the local, regional and national level and maintains a constant exchange with all women's organisations in the region.

The Commission promoted no awareness-raising activities or initiatives in 2020.

VII Regional Observatory on Immigration

The Observatory is a service offered by the Region of Veneto – Immigration flows office – and is managed by Veneto Lavoro. It was established under the three-year immigration initiative programme of 2007-2009 and was subsequently reconfirmed in each successive three-year plan under art. 3 of r.l. 9/1990 (Interventions in the immigration sector).

The Observatory is a technical and scientific tool aimed at monitoring, analysing and spreading information and data on migration flows and integration both regionally and nationally. To achieve this aim, the Observatory: ensures collaboration with other regional observatories concerned with immigration in several respects; guarantees the smooth running and constant update of databanks; monitors the various dynamics of immigration, in-depth studies of various themes and issues, children's living situations and social/school insertion, education and training; ensures updated specialist laws and proposes initiatives to improve the understanding and correct application of those laws.

The most recent annual report by the Regional Observatory on Immigration was published in October 2019. It is the 15th edition of the report and reviews 2018 data (see *Yearbook 2020*, p.178).

In anticipation of the publication of the next report, the statistical data on important aspects on migration for Italy and Veneto and the presence of foreign nations on the territory were made public. These statistics were published in the research series "*Frecce*" which is edited by the Regional Observatory. According to the fourth edition of *Frecce* (December 2020), as of 31 December 2019, there were 485,972 foreign nationals residing in Veneto, equal to 10% of the population. This represents a slight increase of around 4,000 people compared to the previous year. Compared to the figures nationally, Veneto is the fourth highest region in Italy for the number of foreign residents (after Lombardy, Lazio and Emilia-Romagna). The percentage of foreign residents compared to the total population of regions for Veneto is around 10%, keeping it in sixth place after Emilia-Romagna, Lombardy, Lazio, Tuscany and Umbria. Verona (106,692, 11.5% of the population), Padova (93,372, 10% of the population) and Treviso (90,293; 10.2% of the population) are the provinces with the largest percentage of foreign nationals compared to the total population on 31 December 2019. 14,753 non-EU nationals obtained Italian citizenship, amounting to 87% of the total number of citizenship acquisition registered in Veneto (16,960: 7.5% of the total number issued nationally – around 127,000). The main countries of origin for non-EU nationals residing in Veneto at the end of 2019 are Morocco (13.4%), China (10.4%), Albania (8.9%) and the Moldovan Republic (8.7%). One particularly interesting statistic presented in the *Frecce* report concerns the number and type of requests for undeclared work for foreign citizens working in agriculture, in domestic work and personal care work according to the procedures laid out in l.d. 34/2020 (the so-called "Relaunch" decree). In 2020, 12,570 requests were filed in Veneto, 7.1% of the total number presented in Italy (176,848

applications). The provinces of Verona, Venice and Treviso have the most applications presented.

VIII Regional Archive "Pace Diritti Umani – Peace Human Rights"

The Regional Archive was created pursuant to r.l. 18/1988 and reconfirmed by the subsequent r.l. 55/1999. The University of Padova Human Rights Centre "Antonio Papisca" manages the Archive. It is one of the main instruments through which the Region of Veneto promotes the culture of human rights, peace, development cooperation and solidarity in Italy and abroad.

The Archive works to collect, elaborate and publish documents, thematic databases and informational resources on topics regarding regional law, particularly through the regular updating of the portal "*Archivio Pace Diritti Umani*" (http://unipd-centrodirittiumani.it/en/), available in Italian and English, and the distribution of knowledge on human rights through multimedia tools and social networks. In addition, it oversees publication of books, teaching aids, in-depth studies and multimedia and offers technical and scientific support to the actors most actively involved in the promotion and practice of the culture of peace, especially as concerns initiatives promoted by teachers, education staff, schools and civil society organisations. In 2020, the Archive published and distributed sixteen editions of the "peace human rights" newsletter in Italian and in English to its established mailing list.

In 2020, the Archive updated the databases available on its website; notably the repertoire of the main national and international documents relating to the enjoyment of human rights in response to the COVID-19 pandemic (from March-July 2020). Furthermore, it contributed to the "Communicating good practises and experiences of the WPS Agenda: the contribution of the Italian civil society" project, by creating informational videos on the topic. It was also the media partner of the third edition of "Padova Model UPR", a simulation of the UN mechanism which was coordinated by the students of the MA Human Rights and Multi-level Governance programme of the University of Padova.

The Archive contributed to promoting the scientific journal of the University of Padova Human Rights Centre, *Peace Human Rights Governance (PHRG).* It also contributed to the publication and promotion of the 2020 edition of the *Italian Yearbook of Human Rights* in both Italian and English and the institutional presentation of this publication. This presentation took place within the "Speaking about Human Rights in Italy" event on 24 September 2020, as part of the *Solidaria – City of Solidarity* Festival, promoted by the Padova Province Service Centre for Volunteering (*Centro Servizio Volontariato*).

Furthermore, in 2019, the Archive collaborated with national and international organisations and experts in organising a series of initiatives at the University of Padova, especially multimedia and documentary aspects.

The following initiatives are noteworthy: promoting the General course "Human Rights and Inclusion" of the University of Padova for the academic year 2020/2021; technical and multi-media support for the online in-depth

and critical reasoning seminar "On male violence against women: the first GREVIO report on the application of the Istanbul Convention in Italy" (25 May); the training seminar "In Defence of… Cities: a national pilot plan for the support, accompaniment and protection of human rights defenders" (24 June); the event "Presentation of the Guidelines on international protection and violence against women" (24 September); the international conference "Data-driven human rights research" (9-10 November), the National Conference "The impact of COVID-19 on human rights, taking place online during the International Human Rights Day celebrations" (10 December) and, during the same event, the Grand Assembly of Italian schools on rights and responsibilities, organised by the National Coordinating Body of Local Authorities for Peace and Human Rights (see, in this Part, Sub-national Human Rights Structures, VI). The Archive also provided technical support for two events which took place during the commemorations of the 75th Anniversary of the foundation of the United Nations: the online event "Celebrating the UN Charter. Let's defend the values we hold most dear", which was again organised in collaboration with the National Coordinating Body of Local Authorities (26 June) and the seminar "Together for the UN. A Universal Convention to strengthen and democratise the United Nations" (21 September).

PART III – ITALY IN DIALOGUE WITH INTERNATIONAL HUMAN RIGHTS INSTITUTIONS

The United Nations System*

I General Assembly

The General Assembly, which is the main deliberative body of the United Nations, is comprised of six Committees, each of which is made up of all 193 United Nations Member States. Human rights issues are handled mainly within the Third Committee (the Social, Humanitarian and Cultural Committee). The responsibilities of this Committee include issues such as torture and other cruel, inhuman and degrading treatment or punishment; the advancement of women; the rights of refugees and displaced persons; the promotion and protection of the rights of children; the rights of indigenous peoples; the elimination of racism, racial discrimination, xenophobia and related intolerance; the right of peoples to self-determination; and social development.

In December 2020, the 75th session of the GA adopted forty-eight resolutions on human rights that had already been discussed and approved by the Third Committee in October and November. The resolutions concerned a wide range of issues, from the rights of migrants to digital privacy, from protection against discrimination based on sexual orientation and gender identity to specific country situations.

In 2020, Italy's Permanent Representative to the United Nations in New York was Ambassador Mariangela Zappia; the Deputy Permanent Representative was Ambassador Stefano Stefanile; First Counsellor Simona De Martino and First Secretary Ilario Schettino were responsible for following the activities of the Third Committee.

A Resolutions on Human Rights – Italy's Voting Behaviour

As in the past, in 2020, Italy's action in support of human rights prioritised the following thematic areas: promotion of the rule of law and strengthening of democracy; the fight against torture, xenophobia, racism and all forms of discrimination, with specific attention to religious discrimination and intolerance; the rights and protection of children; the abolition of the death penalty; and combating violence against women and female genital mutilation.

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* Andrea Cofelice

Furthermore, Italy did not present any resolutions, however, it sponsored thirty-two resolutions and was asked to pass an open vote on eighteen resolutions (ten votes in favour, four against and four abstentions), the outcome of which is shown below.

Subject	Resolution	Main sponsor of the Resolution	Information regarding Italy	Outcome of the Plenary Session
Social Development	A/RES/75/151 Implementation of the outcome of the World Summit for Social Development and of the twenty-fourth special session of the GA	Guyana	Voted in favour	183 in favour, 2 against, no abstentions
	A/RES/75/152 Follow-up to the Second World Assembly on Ageing	Guyana	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/154 Inclusive development for and with persons with disabilities	Albania et al.	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/155 Literacy for life: shaping future agendas	Albania et al.	Co-sponsor of the Resolution	Adopted by consensus
Advancement of women	A/RES/75/158 Trafficking in women and girls	Bangladesh et al.	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/159 Intensification of efforts to end obstetric fistula	Canada et al.	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/160 Intensifying global efforts for the elimination of female genital mutilation	Burkina Faso	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/161 Intensification of efforts to prevent and eliminate all forms of violence against women and girls	Albania et al.	Co-sponsor of the Resolution	175 in favour, none against, 11 abstentions

continued

Report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees and displaced persons and humanitarian questions	A/RES/75/163 Office of the United Nations High Commissioner for Refugees	Andorra et al.	Co-sponsor of the Resolution	181 in favour, none against, 7 abstentions
	A/RES/75/164 Assistance to refugees, returnees and displaced persons in Africa	Antigua and Barbuda et al.	Co-sponsor of the Resolution	Adopted by consensus
Report of the Human Rights Council	A/RES/75/165 Report of the Human Rights Council	Cameroon	Abstention	119 in favour, 3 against, 60 abstentions
Promotion and protection of children's rights	A/RES/75/166 Protecting children from bullying	Andorra et al.	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/167 Child, early and forced marriage	Albania et al.	Co-sponsor of the Resolution	Adopted by consensus
Elimination of racism, racial discrimination, xenophobia and related intolerance	A/RES/75/169 Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance	Angola	Abstention	130 in favour, 2 against, 51 abstentions
	A/RES/75/237 A global call for concrete action for the elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action	Guyana	Abstention	106 in favour, 14 against, 44 abstentions

continued

The right to self-determination	A/RES/75/171 Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination	Angola et al.	Voted against	126 in favour, 54 against, 6 abstentions
	A/RES/75/172 The right of the Palestinian people to self-determination	Angola et al.	Co-sponsor of the Resolution	168 in favour, 5 against, 10 abstentions
Implementation of human rights instruments	A/RES/75/174 Human rights treaty body system	Austria et al	Co-sponsor of the Resolution	Adopted by consensus
Human rights questions, including alternative approaches to improve enjoyment of human rights and fundamental freedoms	A/RES/75/175 Human rights and extreme poverty	Australia et al	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/176 The right to privacy in the digital age	Austria et al.	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/177 Promotion of peace as a vital requirement for the full enjoyment of all human rights by all	Angola et al.	Voted against	130 in favour, 55 against, 1 abstention
	A/RES/75/178 Promotion of a democratic and equitable international order	Angola et al.	Voted against	125 in favour, 55 against, 8 abstentions
	A/RES/75/179 The right to food	Angola et al.	Co-sponsor of the Resolution Voted in favour	187 in favour, 2 against, no abstentions
	A/RES/75/181 Human rights and unilateral coercive measures	China, Cuba and Russian Federation	Voted against	131 in favour, 56 against, no abstentions
	A/RES/75/182 The right to development	China, Cuba	Abstention	135 in favour, 24 against, 29 abstentions
	A/RES/75/183 Moratorium on the use of the death penalty	Albania et al.	Co-sponsor of the Resolution Voted in favour	123 in favour, 38 against, 24 abstentions

continued

Human rights questions, including alternative approaches to improve enjoyment of human rights and fundamental freedoms	A/RES/75/184 Missing persons	Azerbaijan et al.	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/185 Human rights in the administration of justice	Albania et al.	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/186 The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law	Austria et al.	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/188 Freedom of religion or belief	Albania et al.	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/189 Extrajudicial, summary or arbitrary executions	Albania et al.	Co-sponsor of the Resolution Voted in favour	132 in favour, none against, 53 abstentions
Human rights Situations and reports of Special Rapporteurs and Representatives	A/RES/75/190 Situation of human rights in the Democratic People's Republic of Korea	Albania et al.	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/191 Situation of human rights in the Islamic Republic of Iran	Albania et al.	Co-sponsor of the Resolution Voted in favour	82 in favour, 30 against, 64 abstentions
	A/RES/75/192 Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine	Albania et al.	Co-sponsor of the Resolution Voted in favour	64 in favour, 23 against, 86 abstentions
	A/RES/75/238 Situation of human rights of Rohingya Muslims and other minorities in Myanmar.	Austria et al.	Co-sponsor of the Resolution Voted in favour	130 in favour, 9 against, 26 abstentions

continued

Human rights Situations and reports of Special Rapporteurs and Representatives	A/RES/75/193 Situation of human rights in the Syrian Arab Republic	Albania et al.	Co-sponsor of the Resolution Voted in favour	101 in favour, 13 against, 62 abstentions
Crime prevention and Criminal Justice	A/RES/75/194 Preventing and combating corrupt practices and the transfer of proceeds of corruption, facilitating asset recovery and returning such assets to legitimate owners, in particular to countries of origin, in accordance with the United Nations Convention against Corruption	Antigua and Barbuda et al.	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/195 Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs	Austria et al.	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/196 Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity	Albania et al.	Co-sponsor of the Resolution	Adopted by consensus
	A/RES/75/197 United Nations African Institute for the Prevention of Crime and the Treatment of Offenders	Uganda	Co-sponsor of the Resolution	Adopted by consensus
International Drug Control	A/RES/75/198 International cooperation to address and counter the world drug problem	Antigua and Barbuda et al.	Co-sponsor of the Resolution	Adopted by consensus

Source: United Nations, General Assembly.

II Human Rights Council

The Human Rights Council is the subsidiary body of the General Assembly responsible for addressing human rights violations, promoting worldwide respect of all human rights and fundamental freedoms for all, without distinction of any kind.

Established in 2006 under General Assembly resolution 60/251, the Council is an inter-governmental body made up of 47 United Nations Member States elected by the General Assembly for an initial period of three years, extendable for not more than two consecutive terms. It meets in Geneva, in three ordinary sessions per year, for an overall period of at least ten working weeks. Furthermore, although it is a body of Government representatives, the Council is open to the contributions of nongovernmental organisations which enjoy advisory status with the ECOSOC, which may participate in the meetings and submit written documents.

The Council has established several different "mechanisms" for monitoring human rights (resolution A/HRC/RES/5/1 of June 2007), including: the Universal Periodic Review (UPR), the Special Procedures (which include mandates by Country and thematic mandates), the Advisory Committee and a Complaints Procedure.

In 2020, the Council held:

- three ordinary sessions: 43rd (24 February – 23 March); 44th (30 June – 17 July); 45th (14 September – 7 October);
- no special sessions;
- two UPR sessions: 35th (20-31 January); 36th (2-13 November).

In 2020, Italy was represented at the Human Rights Council by: Amb. Gian Lorenzo Cornado, Permanent Representative of Italy to the International Organisations in Geneva, First Counsellor Daniele Borrelli and First Secretary Angela Zanca.

A Italy's Behaviour at the Human Rights Council in 2020

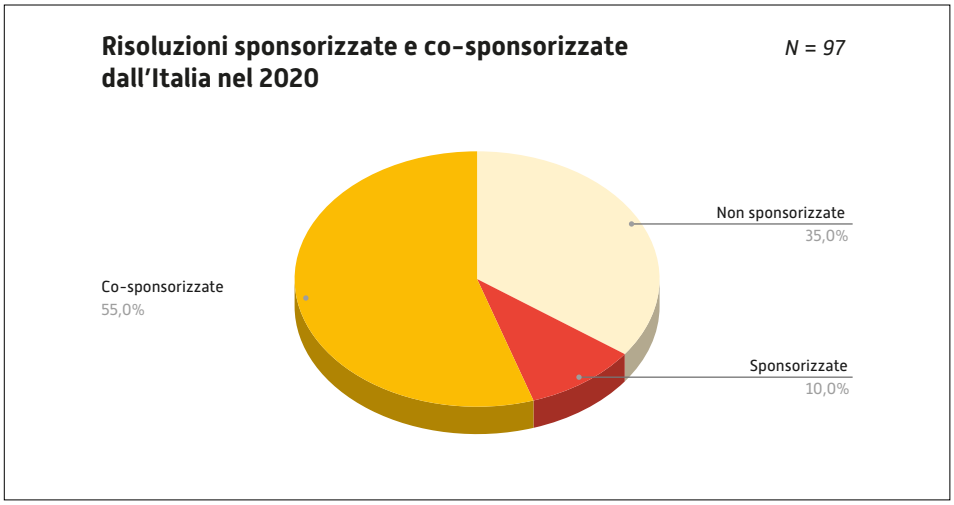
In 2020, Italy participated in the ordinary sessions of the Human Rights Council as a Member State (hence, with the right to vote for the three-year period 2019-2021).

Over the course of 2020, the Human Rights Council adopted ninety-seven resolutions (five more than 2019): thirty-nine resolutions during the 43rd session; twenty-three during the 44th session; thirty-five during the 45th session. Of these resolutions, sixty-six were approved with the consensus of all Member States, whereas a majority vote by Council members was necessary for thirty-one of them showing a slightly lower level of disagreement than in the previous year, when majority voting was required for 38% of the resolutions adopted.

The following paragraph analyses Italy's behaviour at the Human Rights Council in 2020, with a particular focus on two issues: Italy's diplomatic efforts in the negotiation and presentation of resolutions and its voting behaviour.

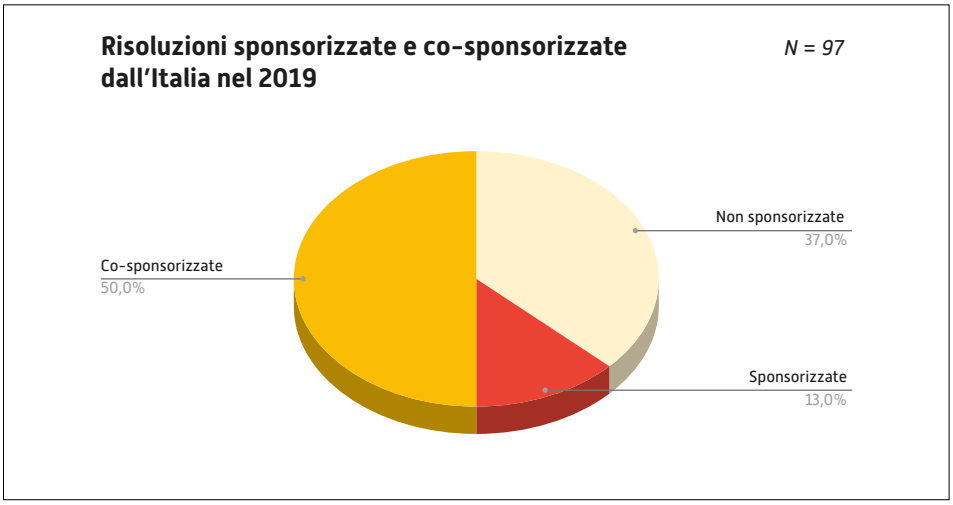
On this first issue, 65% of the resolutions adopted by the Council were negotiated with direct participation (sponsoring) or diplomatic support (co-sponsoring) from Italy. Of the ninety-seven resolutions adopted, Italy sponsored ten (compared to twelve in 2019) and co-sponsored fifty-two (compared to forty-seven in 2019).

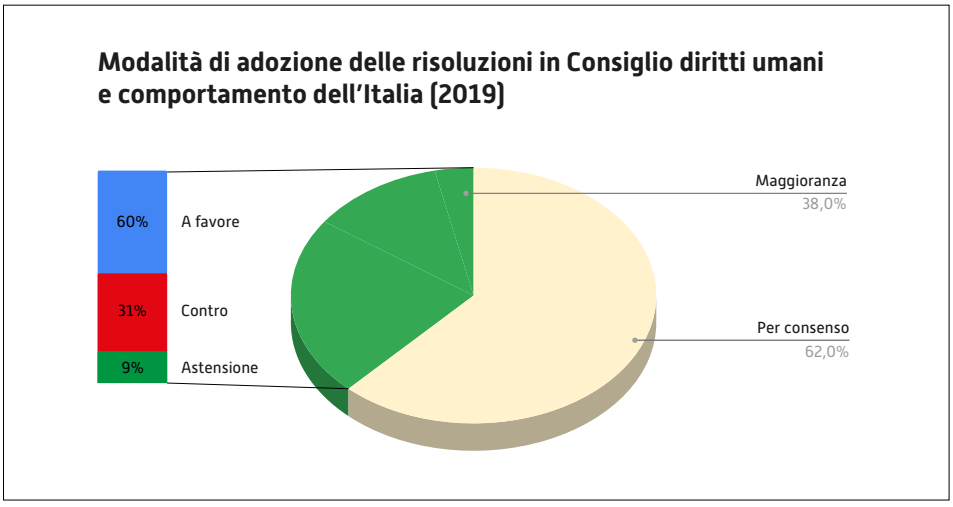
Two of the ten resolutions sponsored by Italy are thematic and refer to children's rights (SDGs 2.2, 3.2, 4, 5, 8.7, 16.2), and two to the right to freedom of religion and belief. The other six resolutions concern the situation of human rights in the Democratic Republic of Korea, Myanmar, Syria, Belarus and Burundi.



Concerning Italy's voting behaviour, the country "won" in nineteen of the thirty-one votes that took place; nine resolutions were adopted by the majority vote of the Council despite Italy voting against them; Italy abstained in three votes.

Italy supported resolutions that had been proposed by States from all the regional groups present in the Council: out of nineteen favourable votes, eight were resolutions presented by the Western Europe Group (United Kingdom, Germany, Sweden, The Netherlands), three by the Asian group (Pakistan), two by the Latin America group (Peru and Costa Rica), one by the Eastern Europe Group (Georgia), and one by the African Group (Morocco). Four votes were expressed in favour of resolutions presented by countries from two or more regional groups.





The votes against were on resolutions presented by Cuba (four out of nine), Azerbaijan (three), Pakistan (one) and China (one). Finally, Italy's abstentions were distributed between the Asian group (Pakistan and Iran) and the African group (South Africa).

The following table summarises the data on both dimensions considered above – in particular, it demonstrates that of resolutions sponsored and co-sponsored by Italy, 75% were adopted by consensus by the Council, while the remaining 25% were adopted by majority vote.

Synopsis of Italy's behaviour at the Human Rights Council in 2020

	Adopted by consensus by the Council	Adopted by majority vote by the Council	Total		
		Italy: *Vote in favour*	*Italy:* *Voted against*	*Italy:* *Vote in favour*	
Resolutions sponsored by Italy	3	7	-	-	10
Resolutions co-sponsored by Italy	44	9	-	-	53
Resolutions not sponsored by Italy	19	3	9	3	34
Total	66	19	9	3	97

Human Rights Council: resolutions sponsored by Italy in 2020

Resolution	**Other sponsors of the resolution**	**Outcome of the voting process**
A/HRC/RES/43/12 Freedom of religion or belief	Croatia	Adopted by consensus
A/HRC/RES/43/22 Mandate of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material	Croatia and Uruguay	Adopted by consensus
A/HRC/RES/43/25 Situation of human rights in the Democratic People's Republic of Korea	Croatia	Adopted by consensus
A/HRC/RES/43/26 Situation of human rights in Myanmar	Croatia	37 in favour, 2 against, 8 abstentions
A/HRC/RES/43/28 Situation of human rights in the Syrian Arab Republic	United Kingdom and Qatar	27 in favour, 2 against, 18 abstentions
A/HRC/RES/44/19 Situation of human rights in Belarus	Germany	22 in favour, 5 against e 20 abstentions

continued

A/HRC/RES/44/21 Situation of human rights in the Syrian Arab Republic	United Kingdom	28 in favour, 2 against, 17 abstentions
A/HRC/RES/45/1 Situation of human rights in Belarus in the run-up to the 2020 presidential election and in its aftermath	Germany	23 in favour, 2 against e 22 abstentions
A/HRC/RES/45/19 Situation of human rights in Burundi	Germany	24 in favour, 6 against, 17 abstentions
A/HRC/RES/45/21 Situation of human rights in the Syrian Arab Republic	United Kingdom	27 in favour, 1 against, 19 abstentions

Source: United Nations, Human Rights Council.

Human Rights Council: resolutions co-sponsored by Italy in 2020

Resolution	**Sponsors of the resolution**	**Outcome of the voting process**
43rd (24 February – 23 March)		
A/HRC/RES/43/2 Promotion and protection of human rights in Nicaragua	Costa Rica	24 in favour, 4 against, 19 abstentions
A/HRC/RES/43/4 Freedom of opinion and expression: mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression	The Netherlands and Canada	Adopted by consensus
A/HRC/RES/43/5 Birth registration and the right of everyone to recognition everywhere as a person before the law	Mexico and Turkey	Adopted by consensus
A/HRC/RES/43/7 Right to work	Egypt and Greece	Adopted by consensus
A/HRC/RES/43/8 Rights of persons belonging to national or ethnic, religious and linguistic minorities: mandate of the Special Rapporteur on minority issues	Austria	Adopted by consensus
A/HRC/RES/43/9 Promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity	Cuba	Adopted by consensus

continued

A/HRC/RES/43/13 Mental health and human rights	Portugal	Adopted by consensus
A/HRC/RES/43/14 Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context	Portugal	Adopted by consensus
A/HRC/RES/43/16 Mandate of the Special Rapporteur on the situation of human rights defenders	Norway	Adopted by consensus
A/HRC/RES/43/17 Regional arrangements for the promotion and protection of human rights	Belgium	Adopted by consensus
A/HRC/RES/43/18 Promoting human rights through sport and the Olympic ideal	Greece	Adopted by consensus
A/HRC/RES/43/19 Promotion and protection of human rights and the implementation of the 2030 Agenda for Sustainable Development	Denmark	Adopted by consensus
A/HRC/RES/43/20 Torture and other cruel, inhuman or degrading treatment or punishment: mandate of the Special Rapporteur	Denmark	Adopted by consensus
A/HRC/RES/43/23 Awareness raising on the rights of persons with disabilities, and habilitation and rehabilitation	Mexico	Adopted by consensus
A/HRC/RES/43/24 Situation of human rights in the Islamic Republic of Iran	Sweden	22 in favour, 8 against, 15 abstentions
A/HRC/RES/43/27 Situation of human rights in South Sudan	United Kingdom	Adopted by consensus
A/HRC/RES/43/29 Prevention of genocide	Armenia	Adopted by consensus
A/HRC/RES/43/36 Mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance	Burkina Faso	Adopted by consensus

continued

A/HRC/RES/43/37 Cooperation with Georgia	Georgia	20 in favour, 2 against, 24 abstentions
A/HRC/RES/43/38 Technical assistance and capacity-building for Mali in the field of human rights	Burkina Faso	Adopted by consensus
A/HRC/RES/43/39 Technical assistance and capacity-building to improve human rights in Libya	Burkina Faso	Adopted by consensus
44th (30 June – 17 July)		
A/HRC/RES/44/1 Situation of human rights in Eritrea	The Netherlands	24 in favour, 10 against, 13 abstentions
A/HRC/RES/44/3 The right to education: followed by resolution 8/4 of the Human Rights Council	Portugal	Adopted by consensus
A/HRC/RES/44/4 Trafficking in persons, especially women and children: strengthening human rights through enhanced protection, support and empowerment of victims of trafficking, especially women and children	Germany	Adopted by consensus
A/HRC/RES/44/5 Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions	Sweden	Adopted by consensus
A/HRC/RES/44/8 Mandate of the Special Rapporteur on the independence of judges and lawyers	Australia	Adopted by consensus
A/HRC/RES/44/9 Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers	Australia	Adopted by consensus
A/HRC/RES/44/10 Special Rapporteur on the rights of persons with disabilities	Mexico	Adopted by consensus
A/HRC/RES/44/12 Freedom of opinion and expression	Canada	Adopted by consensus
A/HRC/RES/44/13 Extreme poverty and human rights	France	Adopted by consensus

continued

A/HRC/RES/44/14 Fifteenth anniversary of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, as enshrined in the 2005 World Summit Outcome	Morocco	32 in favour, 1 against, 14 abstentions
A/HRC/RES/44/15 Business and human rights: the Working Group on the issue of human rights and transnational corporations and other business enterprises, and improving accountability and access to remedy	Norway	Adopted by consensus
A/HRC/RES/44/16 Elimination of female genital mutilation	Burkina Faso	Adopted by consensus
A/HRC/RES/44/17 Elimination of all forms of discrimination against women and girls	Mexico	Adopted by consensus
A/HRC/RES/44/20 The promotion and protection of human rights in the context of peaceful protests	Switzerland	Adopted by consensus
A/HRC/RES/44/23 Contribution of respect for all human rights and fundamental freedoms to achieving the purposes and upholding the principles of the Charter of the United Nations	Australia and Togo	41 in favour, none against, 6 abstentions
45th (14 September – 7 October)		
A/HRC/RES/45/3 Enforced or involuntary disappearances	France	Adopted by consensus
A/HRC/RES/45/7 Local government and human rights	Republic of Korea	Adopted by consensus
A/HRC/RES/45/8 The human rights to safe drinking water and sanitation	Spain and Germany	Adopted by consensus
A/HRC/RES/45/9 The role of good governance in the promotion and protection of human rights	Polonia	Adopted by consensus
A/HRC/RES/45/10 Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence	Switzerland	Adopted by consensus

continued

A/HRC/RES/45/12 Human rights and indigenous peoples	Mexico	Adopted by consensus
A/HRC/RES/45/15 Situation of human rights in Yemen	The Netherlands	22 in favour, 12 against, 12 abstentions
A/HRC/RES/45/18 The safety of journalists	Austria	Adopted by consensus
A/HRC/RES/45/20 Situation of human rights in the Bolivarian Republic of Venezuela	Peru	22 in favour, 3 against, 22 abstentions
A/HRC/RES/45/22 National human rights institutions	Australia	Adopted by consensus
A/HRC/RES/45/25 Technical assistance and capacity-building to further improve human rights in the Sudan	Burkina Faso	Adopted by consensus
A/HRC/RES/45/27 Assistance to Somalia in the field of human rights	United Kingdom and Somalia	Adopted by consensus
A/HRC/RES/45/28 Promoting and protecting the human rights of women and girls in conflict and post-conflict situations on the occasion of the twentieth anniversary of Security Council resolution 1325 (2000)	Spain	Adopted by consensus
A/HRC/RES/45/29 Promoting, protecting and respecting women's and girls' full enjoyment of human rights in humanitarian situations	Fiji	Adopted by consensus
A/HRC/RES/45/30 Rights of the child: realizing the rights of the child through a healthy environment	Germany and Uruguay	Adopted by consensus
A/HRC/RES/45/31 The contribution of the Human Rights Council to the prevention of human rights violations	Sierra Leone and Switzerland	32 in favour, 3 against, 11 abstentions
A/HRC/RES/45/33 Technical cooperation and capacity building for the promotion and protection of human rights in the Philippines	Iceland and The Philippines	Adopted by consensus

Source: United Nations, Human Rights Council.

Human Rights Council: resolutions not sponsored by Italy in 2019

Resolution	**Sponsors of the resolution**	**Outcome of the voting process**	**Information related to Italy**
43rd (24 Feabruary – 23 March)			
A/HRC/RES/43/1 The promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers	Burkina Faso	Adopted by consensus	-
A/HRC/RES/43/3 Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem	Pakistan	22 in favour, 8 against, 17 abstentions	Abstention
A/HRC/RES/43/6 Human rights of migrants: mandate of the Special Rapporteur on the human rights of migrants	Mexico	Adopted by consensus	-
A/HRC/RES/43/10 Mandate of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights	Cuba	26 in favour, 15 against, 6 abstentions	Voted against
A/HRC/RES/43/11 The right to food	Cuba	Adopted by consensus	-
A/HRC/RES/43/15 The negative impact of unilateral coercive measures on the enjoyment of human rights	Azerbaijan	25 in favour, 16 against, 6 abstentions	Voted against
A/HRC/RES/43/21 Promoting mutually beneficial cooperation in the field of human rights	China	23 in favour, 16 against, 8 abstentions	Voted against
A/HRC/RES/43/30 Human rights in the occupied Syrian Golan	Pakistan	26 in favour, 17 against, 4 abstentions	Voted against
A/HRC/RES/43/31 Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan	Pakistan	36 in favour, 2 against, 9 abstentions	Voted in favour

continued

A/HRC/RES/43/32 Human rights situation in the Occupied Palestinian Territory, including East Jerusalem	Pakistan	42 in favour, 2 against, 3 abstentions	Voted in favour
A/HRC/RES/43/33 Right of the Palestinian people to self-determination	Pakistan	43 in favour, 2 against, 2 abstentions	Voted in favour
A/HRC/RES/43/34 Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief	Pakistan	Adopted by consensus	-
A/HRC/RES/43/35 Mandate of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action	Burkina Faso	Adopted by consensus	-
44th (30 June – 17 July)			
A/HRC/RES/44/2 The central role of the State in responding to pandemics and other health emergencies, and the socioeconomic consequences thereof in advancing sustainable development and the realization of all human rights	South Africa	Adopted by consensus	-
A/HRC/RES/44/6 Elimination of discrimination against persons affected by leprosy and their family members	Japan	Adopted by consensus	-
A/HRC/RES/44/7 Human rights and climate change	The Philippines	Adopted by consensus	-
A/HRC/RES/44/11 Mandate of the Independent Expert on human rights and international solidarity	Cuba	31 in favour, 15 against, 1 abstentions	Voted against
A/HRC/RES/44/18 Enhancement of international cooperation in the field of human rights	Azerbaijan	30 in favour, 15 against, 2 abstentions	Voted against
A/HRC/RES/44/22 The Social Forum	Cuba	Adopted by consensus	-

continued

45th (14 September – 7 October)			
A/HRC/RES/45/2 Strengthening cooperation and technical assistance in the field of human rights in the Bolivarian Republic of Venezuela	Iran	14 in favour, 7 against, 26 abstentions	Abstention
A/HRC/RES/45/4 Mandate of the Independent Expert on the promotion of a democratic and equitable international order	Cuba	22 in favour, 15 against, 10 abstentions	Voted against
A/HRC/RES/45/5 Human rights and unilateral coercive measures	Cuba	27 in favour, 15 against, 5 abstentions	Voted against
A/HRC/RES/45/6 The right to development	Azerbaijan	27 in favour, 13 against, 7 abstentions	Voted against
A/HRC/RES/45/11 Terrorism and human rights	Egypt and Mexico	Adopted by consensus	-
A/HRC/RES/45/13 Human rights and the regulation of civilian acquisition, possession and use of firearms	Ecuador	Adopted by consensus	-
A/HRC/RES/45/14 Eliminating inequality within and among States for the realization of human rights	South Africa	25 in favour, 8 against, 14 abstentions	Abstention
A/HRC/RES/45/16 Mandate of the open-ended intergovernmental working group to elaborate the content of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies	Burkina Faso	Adopted by consensus	-
A/HRC/RES/45/17 Mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes	Burkina Faso	Adopted by consensus	-
A/HRC/RES/45/23 Commemoration of the twentieth anniversary of the adoption of the Durban Declaration and Programme of Action	Burkina Faso	Adopted by consensus	-

continued

A/HRC/RES/45/24 Mandate of the Working Group of Experts on People of African Descent	Burkina Faso	Adopted by consensus	-
A/HRC/RES/45/26 Technical assistance and capacity-building for Yemen in the field of human rights	Bahrain	Adopted by consensus	-
A/HRC/RES/45/32 Enhancement of technical cooperation and capacity-building in the field of human rights	Thailand	Adopted by consensus	-
A/HRC/RES/45/34 Technical assistance and capacity-building in the field of human rights in the Democratic Republic of the Congo	Burkina Faso	Adopted by consensus	-
A/HRC/RES/45/35 Technical assistance and capacity-building in the field of human rights in the Central African Republic	Burkina Faso	Adopted by consensus	-

Source: United Nations, Human Rights Council.

B Universal Periodic Review

Italy was subjected to its first Universal Periodic Review (UPR) in 2010 (7th session): on that occasion, ninety-two recommendations were addressed to Italy, of which it fully accepted (supported) seventy-eight, partially rejected (noted) two and fully rejected twelve. Detailed information on the outcome of the first Universal Periodic Review for Italy can be found in the *Italian Yearbook of Human Rights* 2011 (p. 169–173).

In 2014, Italy was subjected to its second UPR cycle (20th session), during which, 186 recommendations were addressed to Italy, of which it fully supported 176 and noted twelve. Detailed information on the outcome of the second Universal Periodic Review for Italy can be found in the *Italian Yearbook of Human Rights 2015* (p. 161–164).

In 2019, Italy was subjected to its third UPR cycle (34th session): in this instance, Italy received 306 recommendations, supporting 292, noting two and rejecting eleven. Detailed information on the outcome of the third Universal Periodic Review for Italy can be found in the *Italian Yearbook of Human Rights 2020* (pp. 208-214).

C Special Procedures

In 2020, the Human Rights Council did not establish any special procedures. Consequently, there were forty-four thematic and ten country mandates.

It should be noted that in 2020, Maria Grazia Giammarinaro held the position of Special Rapporteur on trafficking in persons, especially women and children.

In 2020, Italy was subject to a thematic report of the Special Rapporteur on the right to food, Hilal Elver, following her visit to Italy in January 2020 (doc. A/HRC/43/44/Add.5).

In her report, the Special Rapporteur acknowledged that Italy has valuable experience and several successful programmes that could be used as a model for other countries. For instance, the programmes on organic agriculture, access to land for young farmers, food waste management; the social welfare system, including the minimum guaranteed income; and the laws and regulations on the prevention and eradication of the *caporalato* labour exploitation, and the fight against fraudulent activities and crimes relating to the food and agricultural system are commendable.

Moreover, to further develop a human rights-based approach to food security, the Special Rapporteur urges the Government and other stakeholders to prioritize the following issues:

- adopt a comprehensive framework law that has an interdisciplinary focus and human rights-based approach to food security and food sovereignty, and promote a sustainable agricultural system;
- move from a charity-based approach to the full implementation of the right to food to eliminate hunger and food insecurity;
- dopt a national framework law for school feeding programmes that includes funding to combat disparities among municipalities and ensure that all students have access to school canteens;
- take necessary gender-sensitive legal and budgetary measures to ensure that women in the agricultural sector, including migrant workers, fully enjoy their human rights and have access to decent work standards;
- complement poverty statistics by specific food poverty statistics;
- establish strong control mechanisms for Common Agricultural Policy subsidies to ensure that funds are provided to actual farmers;
- approve the law on the low-cost sale of agricultural products and to ban double-race auctions for the purchase of agricultural goods, currently pending in Parliament;
- support the income of smallholders through the direct payment of the first pillar of the Common Agricultural Policy in order to reduce their production costs;
- adopt measures to support migrant workers who face harsh living conditions and regularize their status in the country by, for example, providing work permits, re-establishing humanitarian protection and creating national mechanisms to provide them with access to basic services;
- revise Law 199/2016 on *caporalati* to include criminal and/or tort responsibility of third parties, and also consider creating a national coordination to assess *caporalati* across the country;

- repeal the "Salvini decree", which has de facto fostered a reality outside the law that has benefited criminal organizations, and address the correct treatment of migrants;
- further increase the monitoring of the use of banned pesticides and establish positive incentives and assistance for organic farming;
- promote local products and urban farmers' markets to ensure that consumers can access better quality food;
- legislate a stronger law-and-order approach to environmental crimes;
- provide support to the countries of origin of main migrant workers living in harsh conditions in Italy to ensure that they can remain in their own countries.

Special Procedure Visits to Italy (2002-2020)

Date	**Mandate of the Special Procedures**	**Report**
20-31 January 2020	Right to Food	A/HRC/43/44/Add.5
3-12 October 2018	Extrajudicial, summary and arbitrary executions	A/HRC/42/44/ADD.1
10-16 May 2017	People of African descent	A/72/335
1-5 June 2015	Human rights of migrants	A/HRC/33/61/Add.1
2-5 December 2014	Arbitrary detention	A/HRC/29/36/Add.2
7-9 July 2014	Freedom of opinion and expression	A/HRC/30/36/Add.3
11-18 November 2013	Trafficking in persons	A/HRC/26/30/Add.3
12-20 September 2013	Human rights of migrants	A/HRC/26/37/Add.4
30 September-8 October 2012	Violence against women	A/HRC/23/46/Add.3
15-26 January 2012	Arbitrary detention	A/HRC/20/16/Add.2
3-14 November 2008	Contemporary forms of racism	A/HRC/10/21/Add.5
9-13 October 2006	Freedom of opinion and expression	A/HRC/4/19/Add.4
20-29 October 2004	Human rights of migrants	E/CN.4/2005/64/Add.1
7-18 June 2004	the independence of judges and lawyers	E/CN.4/2005/85/Add.3
11-14 March 2002	Extrajudicial, summary and arbitrary executions	E/CN.4/2002/72/Add.3

III High Commissioner for Human Rights (OHCHR)

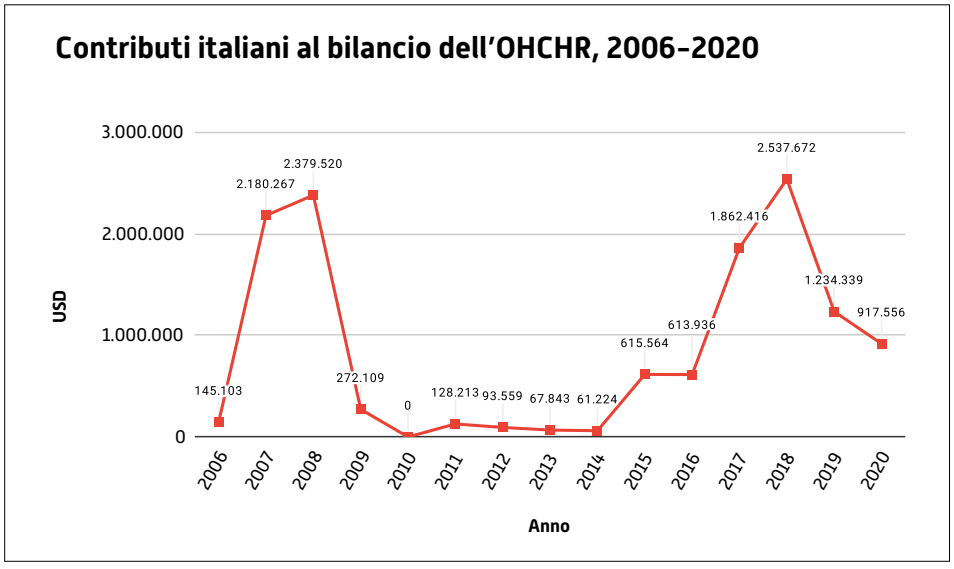
The Office was established by the General Assembly in December 1993 with Resolution 48/141.

The High Commissioner has a broad mandate which includes the prevention of violations of human rights, ensuring the respect of all human rights, coordinating all United Nations activities involving human rights and strengthening national systems for protecting human rights and the rule of law. In this context, one of the crucial strategic activities for the High Commissioner's Office is supporting the establishment and development of independent human rights commissions at the national level. In order to fulfil its mandate, the Office of the High Commissioner has consolidated its presence "on the ground", establishing 13 regional offices and 13 national offices, sending experts on integrated United Nations peace missions or dispatching independent fact-finding operations, as well as mainstreaming the human rights component in United Nations teams' activities at Country or Programme level, and in those of specialised agencies of the United Nations (such as UNDP).

In 2020, Michelle Bachelet (Chile) covered the role of High Commissioner for Human Rights.

The Office of the High Commissioner is funded one-third by the regular budget of the United Nations, approved by the General Assembly every two years; the remaining two-thirds of the budget are voluntary contributions, mostly from States and additionally from international organisations, foundations, commercial enterprises, and private citizens.

In 2020, Italy contributed to the budget of the High Commissioner's Office with funds of around $918,000 (around 0.4% of all voluntary contributions received by the office in 2020, ranking 23rd among donors: see graph below).



Source: OHCHR, Voluntary contributions to OHCHR in 2020.

IV High Commissioner for Refugees (UNHCR)

This Office was established by the United Nations General Assembly on 14 December 1950, with resolution A/RES/428(V).

The mandate of the Agency is to coordinate international action for the protection of refugees and the resolution of their problems all over the world. Its primary mission is to protect the rights and welfare of refugees and to ensure that all of them can exercise their right to request asylum and seek safe shelter in another State, with the option to return voluntarily to their home Country, integrate locally or to resettle into a third Country. The remit of the UNHCR also includes assistance to stateless persons.

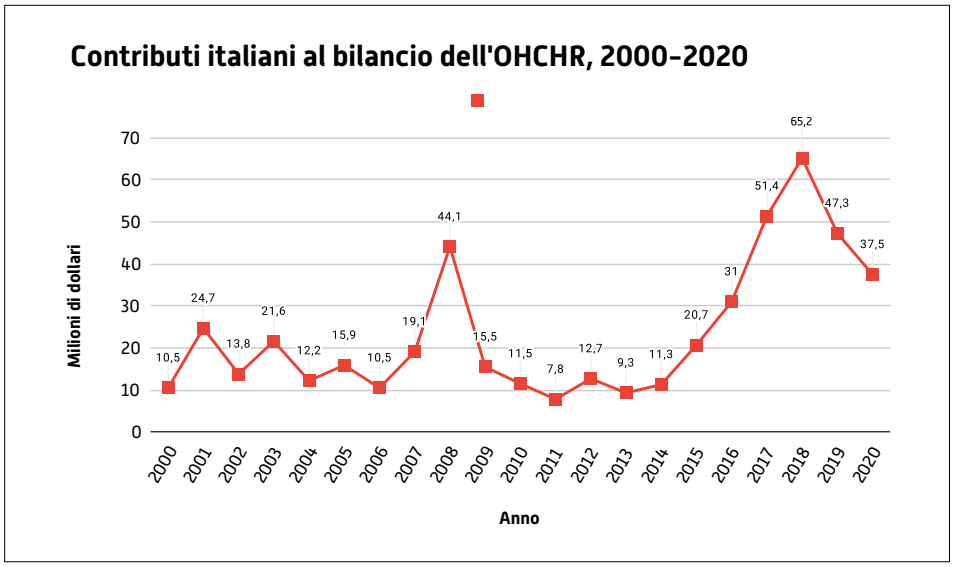
On 1 January 2016, the General Assembly of the United Nations appointed Filippo Grandi (Italy) High Commissioner for Refugees, for a five-year mandate.

The UNHCR has had its own office in Rome since 1953. The Italian office participates in the procedures to determine refugee status in Italy and performs other duties regarding international protection, training, dissemination of information on refugees and asylum-seekers in Italy and in the various crisis areas all over the world, raising public awareness and fund-raising with Governments, companies and individual donors. Since 2006, the Italian UNHCR Office has performed as the Regional Representative for Albania, Cyprus, Greece, Malta, Portugal, San Marino, and the Holy See, besides Italy. In 2020, the UNHCR Spokesperson in Italy was Carlotta Sami.

According to the data provided by the UNHCR, in 2020, 34,154 migrants arrived in Italy by sea, almost three times the 2019 figure (11,500), while over 4,100 arrived overground via the Italian-Slovenia border after travelling through South-East Europe. The majority of these were men (75%), followed by unaccompanied minors (14%), women (6%) and accompanied minors (5%).

In a note from 20 January 2021, the UNHCR expressed its satisfaction for the adopting of law 173/2020 in December 2020. The Agency believes that the e new law remedies many of the critical aspects of the security decrees introduced by the previous Government and restores rights to refugees and asylum-seekers to facilitate their integration in Italy. In particular, new provisions guarantee private life, family unity, physical and mental health as well as specific measures for persons with specific needs in first-line reception centres. The new law ensures that vulnerable individuals are exempted from accelerated asylum procedures and restores previous legislation ensuring access to residence registration for asylum-seekers.

In 2020, Italy contributed to the UNHCR budget by allocating approximately $37 million (around 0.8% of overall voluntary contributions for the office in 2019, ranking 2020, 19th among donors), showing a decrease of around $10 million compared to the previous year (see chart below).



Source: UNHCR.

V Human Rights Treaty Bodies

Over the years, the United Nations has established a comprehensive Human Rights Code (*International Bill of Human Rights*), whose backbone consist of the following nine conventions: International Convention for the Elimination of All Forms of Racial Discrimination (ICERD, 1965); International Covenant on Civil and Political Rights (ICCPR, 1966); International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966); Convention against all Forms of Discrimination against Women (CEDAW, 1979); International Convention against Torture (CAT, 1984); Convention on the Rights of the Child (CRC, 1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW, 1990); Convention on the Rights of Persons with Disabilities (CRPD, 2006); and the International Convention for the Protection of All Persons from Enforced Disappearance (CPED, 2006).

Italy has ratified eight conventions and relevant optional protocols (as shown in the following table). However, it has not yet signed the ICRMW.

Convention	Ratification law	Declarations / reservations	Recognition of Specific Competences of the Committee
ICERD	l. 13 October 1975, No. 654	Yes (art. 4)	Individual Communications (art. 14): Yes
ICESCR	l. 25 October 1977, No. 881	No	-

continued

OP	l. 3 October 2014, No. 52	No	-
ICCPR	l. 25 October 1977, No. 881	Yes (art. 15.1 and 19.3)	Individual Communications (art. 41): Yes
OP - 1	l. 25 October 1977, No. 881	Yes (art. 5.2)	-
OP - 2	l. 9 December 1994, No. 734	No	-
CEDAW	l. 14 March 1985, No. 132	Yes (general)	-
OP	Deposito ratification: 22/09/2000	No	Enquiry Procedure (articles 8 and 9): Yes
CAT	l. 3 November 1988, No. 498	No	Individual Communications (art. 22): Yes Interstate Communications (art. 21): Yes Enquiry Procedure (art. 20): Yes
OP	l. 9 November 2012, No. 195	No	Visits by the Subcommittee on Prevention of Torture (art. 11) Yes
CRC	l. 27 May 1991, No. 176	No	-
OP - AC	l. 11 March 2002, No. 46	Declaration binding pursuant to art. 3: 17 years	-
OP - SC	l. 11 March 2002, No. 46	No	-
OP - IC	l. 16 November 2015, No. 199	No	Individual Communications: Yes Enquiry Procedure (art. 13): Yes
CRPD	l. 3 March 2009, No. 18	No	-
OP	l. 3 March 2009, No. 18	No	Enquiry Procedure (articles 6 and 7): Yes
CPED	l. 29 July 2015, No. 131	No	Enquiry Procedure (art. 33): Yes

Legend:

OP = Optional Protocol

OP - AC = Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

OP - SC = Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

OP - IC = Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure

In addition to recognising human rights in legally binding treaties, the UN has created monitoring mechanisms for each treaty. These Treaty Bodies are made up of ten to twenty-three independent experts, selected on the basis of their integrity and experience recognised in the field of human rights.

The main function of the Committees is to examine the periodic reports on the implementation of the internationally established standards in the Contracting Country. States are obliged to present these reports periodically (usually every four or five years). The Committees can carry out monitoring functions through three other mechanisms: field surveys; examination of inter-State communications; and examination of individual communications. The Committees provide their interpretation of the content of the provisions on human rights by publishing General Comments (for a more in-depth analysis of these functions, see *Yearbook 2011*, p. 180).

Italy is monitored by eight Committees, as indicated in the following table. In 2020, Italy did not present any reports and did not receive concluding remarks from any Committees.

Italy's cooperation with UN Treaty Bodies

Committee	**Total reports presented**	**Last report presented**	**Latest concluding remarks**	**Reporting status**
CERD	21	February 2019	-	XXI report: presented and awaiting discussion
CESCR	5	August 2012	October 2015	Late: due in 2020
CCPR	6	October 2015	March 2017	VII report: due in 2022
CEDAW	7	October 2015	July 2017	VIII report: due in 2021
CAT	6	October 2015	November 2017	VII report: due in 2021
CRC	6	July 2017	February 2019	VII report: due in 2023
CRPD	1	November 2012	September 2016	II, III and IV joint report: due in 2023
CED	1	April 2018	May 2019	II report: due in 2025

A Committee on Economic, Social and Cultural Rights

In 2020, the Committee held two sessions: 67th (17 February – 6 March) and 68th (28 September – 16 October). In the 67th session, the reports of Belgium, Benin, Guinea, Norway and Ukraine were analysed; in the 68th, the individual communications of Spain and Argentina were analysed. Over the year, General Comment No. 25 on science and economic, social and cultural rights (art. 15(1)(b), (2), (3) and (4) of the Covenant) was adopted.

The last periodic report of Italy was discussed by the Committee in September 2015, during its 56th session (see *Yearbook 2016*, p. 160-162). Italy should have presented its sixth report in 2020.

B Human Rights Committee (Civil and Political Rights)

In 2020, the Committee held three sessions: 128th (2-27 March), 129th (29 June – 24 July) and 130th (12 October – 6 November). In the 128th session, the reports from the Central African Republic, Portugal, Tunisia and Uzbekistan were analysed; instead, the 129th and 130th sessions were preparatory in nature. Over the year, General Comment No. 37 on the right of peaceful assembly (art. 21 of the Covenant) was adopted.

The last periodic report on Italy was discussed by the Committee in March 2017, during the 119th session (see *Yearbook 2018*, p. 169-174). Italy is required to present its seventh report in 2022.

C Committee against Torture

In 2020, the Committee held only one session (69th session, 13-30 July), during which no State reports were analysed. Over the year, no General Comments were adopted.

The last periodic report on Italy was discussed by the Committee in November 2017, during the 62nd session (see *Yearbook 2018*, p. 175-178). Italy is required to present its seventh report in 2021.

D Committee on the Elimination of Racial Discrimination

In 2020, the Committee held two sessions: 101st (20 April – 8 May and 4-7 August) and 102nd (16-24 November), during which the reports of Bahrain, Belgium, Bolivia, Denmark, France, Niger, Singapore, Thailand, Azerbaijan, Cameroon, Estonia, Kazakhstan, Lebanon, The Netherlands, Nicaragua, Senegal, Switzerland were analysed. Over the year, no General Recommendations were adopted.

Italy presented its latest report in February 2019 but has not yet discussed it.

E Committee on the Elimination of Discrimination against Women

In 2020, the Committee held three sessions: 75th (18 February – 8 March), 76th (1-19 July) and 77th (21 October – 8 November). During the 75th session, the reports of Afghanistan, Bulgaria, Eritrea, Kiribati, Latvia, Pakistan, Republic

of Moldova, Zimbabwe were analysed; in the 76th and 77th, no State reports were analysed. Across the year, no General Recommendations were adopted.

The latest periodic report of Italy was discussed by the Committee in July 2017, during the 67th session (see *Yearbook 2018*, pp. 179-185). Italy is due to present its eighth report in 2021.

F Committee on the Rights of the Child

In 2020, the Committee held three sessions: 83rd (20 January – 7 February), 84th (2-6 March) and 85th (14 September – 1 October). During the 83rd session, the reports of Austria, Belarus, Costa Rica, Hungary, Rwanda, Palestine; in the 84th, the reports of Cook Islands, Micronesia and Tuvalu were analysed; in the 85th, no State reports were analysed. Over the year, no General Comments were adopted.

The latest periodic report of Italy was discussed by the Committee in January 2019, during the 80th session (see *Yearbook 2020*, pp. 230-236). Italy is due to present its seventh report in 2023.

G Committee on the Rights of Persons with Disabilities

In 2020, the Committee held its 23rd session (17 August – 4 September), during which the individual communications of Brazil, Germany, South Africa, Spain and Sweden. Over the year, no General Comments were adopted.

The latest periodic report of Italy was discussed by the Committee in August 2016, during the 16th session (see *Yearbook 2017*, pp. 178-182). Italy is due to present its joint second, third and fourth periodic report in May 2023.

H Committee on Enforced Disappearances

In 2020, the Committee held two sessions: 18th (8-18 April) and 19th (30 September – 11 October), during which the report of Iraq was analysed.

The latest periodic report of Italy was discussed by the Committee in April 2019 during the 16th session (see *Yearbook 2020*, pp. 236-238). Italy is due to present its second report in 2025.

I Committee on Migrant Workers

In 2020, the Committee held an organisational session, during which no Concluding Remarks were adopted. Across the year, no General comments were adopted.

Italy has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and therefore is not monitored by the Committee.

VI Specialised United Nations Agencies, Programmes and Funds

A International Labor Organization (ILO)

Established by the Treaty of Versailles in 1919, the ILO became the first specialised agency of the United Nations in 1946.

The ILO is devoted to promoting decent and productive work for men and women in conditions of freedom, equality, safety and dignity. Its chief objectives are: to promote rights at work, to encourage decent employment opportunities, to enhance social protection and to strengthen dialogue on work-related issues. The ILO is the only United Nations agency which has a tripartite structure: representatives of Governments, employers and workers jointly elaborate the policies and programmes of the Organisation. 185 States are members of the ILO.

Since its foundation, the ILO has adopted 189 conventions. Of these, the ILO has identified 8 which it defines as "fundamental" or "core" (No. 29 on Forced Labour, 1930; No. 87 on Freedom of Association and Protection of the Right to Organise, 1948; No. 98 on the Right to Organise and Collective Bargaining, 1949; No. 100 on Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951; No. 105 on the Abolition of Forced Labour, 1957; No. 111 on the Elimination of All Forms of Discrimination in Employment, Occupation, Vocational Training and Terms and Conditions of Employment, 1958; No. 138 on the Minimum Age for Admission to Employment or Work, 1973; and No. 182 on the Elimination of the Worst Forms of Child Labour, 1999) and 4 defined as "priority" (or "governance": No. 81 on Labour Inspection, 1947; No. 122 on Employment Policy, 1964; No. 129 on Labour Inspection [Agriculture], 1969; and No. 144 on Tripartite Consultation [International Labour Standards], 1976).

Italy has been a member of the ILO since 1919 (amongst the founding members); it withdrew from the Organisation in 1937 but joined again permanently in 1945. The ILO is present in Italy with its offices in Rome, which have been operating since 1920, and the International Training Centre, established in Turin in 1965.

Italy has ratified 113 conventions adopted by the ILO (of which seventy-five are in force and thirty-three denounced), including the eight fundamental ones, the four priority ones and 101 of the 178 technical conventions.

In order to monitor the application of conventions ratified by States, in 1926, the ILO established the Committee of Experts on the Application of Conventions and Recommendations, a body made up of twenty eminent jurists and social professionals, who are independent of Governments and appointed on individual merits. The monitoring mechanism requires each Member State to submit periodic reports on the steps they have taken, in law and in practice, to apply each of the conventions it has ratified. At the same time, Governments are required to submit copies of their reports to employers' and workers' organisations, which are entitled to make comments and supply further information. Government reports are initially examined by the Committee of Experts, which can make two different kinds of comments: observations and direct requests. The observations contain comments on fundamental questions raised by the application of a particular convention by a State and are published in the Committee's annual report. On the other hand, direct requests relate to more technical requests or requests for further information; they are not published in the report but are communicated directly to the Governments concerned.

Upon conclusion of its considerations, the Committee presents an annual report to the *International Labour Conference*, the most representative body of the ILO, comprising representatives from all the ILO Member States and including all its observations and recommendations, which are carefully examined by the *Conference Committee on the Application of Standards*, a tripartite standing committee made up of Government, employer and worker delegates. This Committee selects a number of observations from the report for more in-depth discussion. The Governments referred to in these comments are invited to respond before the Conference Committee to provide information on the situation in question. In many cases, the Conference Committee adopts conclusions recommending that Governments take specific steps to remedy a problem or to invite the ILO to come on a mission to their Country or to request technical assistance.

In 2020, Italy received:

- two observations regarding the following conventions: No. 111 on Discrimination (Employment and Occupation), 1958; and No. 143 on Migrant Workers (Supplementary Provisions), 1975;
- four direct requests regarding the following conventions: No. 97 Migration for Employment Convention (Revised), 1949; No. 100 on Equal Remuneration Convention, 1951; No. 111 on Discrimination (Employment and Occupation)), 1958; No. 143 on Migrant Workers (Supplementary Provisions), 1975.

In 2020, Italy contributed 3.75% of the regular budget of the ILO, with a sum of around 17 million Swiss Francs.

B United Nations Educational, Scientific and Cultural Organisation (UNESCO)

The human rights which fall under the responsibility of UNESCO are the right to education, the right to benefit from scientific progress, the right to participate freely in cultural life and the right to information, including freedom of opinion and expression. In connection with these, the right to freedom of thought, conscience and religion, the right to seek, receive and impart information and ideas through any instrument and across borders, the right to protection of the moral and material interests resulting from any scientific, literary or artistic production are pertinent, as are the right to freedom of assembly and association, the right to education, the right to enjoy the benefits of scientific progress, the right freely to participate in the cultural life, and the right to information, including the freedom of opinion and expression.

Italy has been a member of UNESCO since 1948. In 2020, the post of Permanent Representative to UNESCO was filled by Amb. Massimo Riccardo. Since its establishment, UNESCO has adopted 31 conventions, 20 of which have been ratified by Italy.

In the field of education, it should be noted that in 1991, the 26th General Conference of UNESCO established the International Programme for University Cooperation (IUC - International University Cooperation). The Programme works to foster the creation of a network of centres of excellence (UNESCO Chairs) able to implement advanced teaching and research programmes in disciplines related to UNESCO policies, with particular

reference to the issues of peace and human rights, democracy and intercultural dialogue. There are over 700 UNESCO Chairs created all over the world; in 2017 in Italy there are twenty-five Chairs (as in 2016), three of which deal specifically with human rights, reporting the wording in the denomination: Chair "Human Rights, Democracy and Peace", established in 1999 at the University of Padova; Chair "Human Rights and Ethics of International Cooperation", established in 2003 at the University of Bergamo; Chair "Bioethics and Human Rights", established in 2009 at the Pontifical Athenaeum "Regina Apostolorum", European University of Rome; Chair "Gender Equality and Women's Rights", established in 2019 at the University of Insubria.

In the field of bioethics, two committees operate at UNESCO: the International Bioethics Committee (IBC) and the Intergovernmental Bioethics Committee (IGBC).

The IBC was established in 1993, particularly thanks to the efforts of the then-Director-General of UNESCO Federico Mayor. It is a body made up of 36 independent experts coming from different geographical and disciplinary backgrounds. Its mission is to follow progress in life science and its applications in order to ensure respect for human dignity and human rights and to promote reflection on the ethical and legal issues raised by research in the life sciences and their applications. To this end, over the years the IBC has published a number of recommendations and other documents, the most significant of which is the Universal Declaration on Bioethics and Human Rights, adopted by the UNESCO General Conference in 2005. The Committee meets once a year when summoned by the Director-General of UNESCO.

The IGBC was created in 1998 pursuant to art. 11 of the IBC Statute. It is composed of thirty-six Member States who are elected by the UNESCO General Conference and meets at least once every two years to examine the proposals and recommendations of the IBC and to forward these proposals, accompanied by its own opinions, to the other UNESCO Member States.

In 2020, Italy contributed about 4.3% of the regular budget of UNESCO (which cover the regular expenses for the maintenance of the staff and for the main activities of the Organisation), which constitutes around $11.2 million.

UNESCO Machinery

In 2020, Italy was not involved with any of the organisation's monitoring mechanisms.

C Food and Agriculture Organisation of the United Nations (FAO)

The FAO was established in 1945 in Ville de Quebec, Canada, and has its headquarters in Rome. Qu Dongyu (China) has been the Director-general of the Organisation since August 2019.

In 2020, Italy was the seventh highest contributor to the FAO with around $9 million in contributions. Italy collaborates with the FAO through the FAO/Italy Cooperation Programme, whose main components, financed by Italian voluntary contributions, are the Traditional Programme; the Italian Trust Fund for Food Security and the Decentralised Cooperation Programme.

D World Health Organization (WHO)

The World Health Organisation was established in 1948. Its primary objective is the attainment by all peoples of the highest possible level of health, understood not as the absence of disease but as a state of complete physical, mental and social well-being.

In Italy, there is a WHO office in Venice, with another twenty-eight collaborating centres currently accredited (in terms of the number of this type of structure, Italy is the second in Europe and ninth in the world). These collaborating centres are specialised institutions to which the WHO does not grant any funding: they are identified by the WHO Director General and are part of a worldwide network of organisational support in the various medical-scientific fields. In Italy, their activity is coordinated by the Ministry of Health.

E United Nations Development Program (UNDP)

The United Nations Development Programme (UNDP) was established by the General Assembly in 1965 and has the role of central agency for the coordination and funding of development cooperation of the United Nations system.

NDP action pursues the general objective of "human development", understood as not only economic growth but also as social development, based on gender equality and respect for human rights. UNDP conducts research and analysis, preparing studies and reports. Of the most significant, worth noting are the Annual Report on Human Development and the report on the state of achievement of the Sustainable Development Goals.

In 2020, Italy contributed around $5.9 million to the regular budget of the UNDP, putting it in 17th place among the major contributing countries. This year, Italy allocated a further $74.9 million for specific projects and programmes coordinated by the UNDP.

F United Nations Environment Program (UN-Environment)

UN-Environment is the leading global environmental authority that defines the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development within the system of nations. Its mission is to coordinate and promote the creation of a global partnership for the development of projects and activities to protect the environment so that nations and peoples can improve their quality of life without compromising that of future generations.

Inger Andersen (Denmark) has been Executive Director of the Program since February 2019. The representative at the UN-Environment and the Head of Mission of the Italian Embassy in Nairobi is currently Amb. Alberto Pieri (in the role since September 2018).

G United Nations Program for Human Settlements (UN-HABITAT)

United Nations Program for Human Settlements, UN-HABITAT is invested with the mission to foster sustainable urbanisation from the social and envi-

ronmental point of view with the ultimate objective of guaranteeing everyone the right to decent housing.

The current General Director is Maimunah Mohd Sharif (Malaysia); as of September 2018, the Permanent Italian Representative at the UN-HABITAT is Alberto Pieri.

UN-HABITAT works in close collaboration with local authorities, including Municipalities, Provinces and Regions, thanks above all to the special relationship established with UNACLA, the UN Advisory Committee on Local Authorities. The latter is made up of mayors and representatives of umbrella organisations of local authorities chosen by the UN-HABITAT Director-General on the basis of their competence and commitment in implementing the UN agenda on human settlements.

H United Nations Children's Fund (UNICEF)

UNICEF is the permanent fund of the United Nations which is assigned the mandate to protect and promote the rights of children, girls and adolescents with the aim of improving their living conditions. Since 1 January 2018, the Executive Director has been Henrietta H. Fore (USA).

In Italy, the UNICEF Research Centre is located at the *Istituto degli Innocenti* in Florence. Since 1974, the Italian Committee for UNICEF has been working in Italy; it is a non-governmental organisation whose activities are overseen by a cooperation agreement signed with UNICEF International. Carmela Pace was the named President in December 2020.

UNICEF has launched a vast programme in Italy for migrant and refugee minors, particularly minors who are not accompanied by a family member. The aim of this programme is to provide measures of assistance from first reception to their transferral to smaller, more stable structures, from monitoring human rights standards to school and cultural inclusion in the local community.

I International Organization for Migration (IOM)

Established in 1951, the IOM is the main inter-governmental organisation dealing with migrant issues. Its mission is to promote orderly migration based on respect for human dignity; to this end, it collaborates with Governments and civil society. From June 2018, the Director-General of the Organisation is António Manuel de Carvalho Ferreira Vitorino (Portugal).

The IOM Coordination Office for the Mediterranean countries is based in Rome and the main activities of the IOM offices in Italy concern: providing assistance to vulnerable groups and minors, migration and employment; migration and health; migration, climate and development, reuniting families; supporting voluntary return, and; relocation and resettlement.

In 2020, the IOM did not publish any briefings concerning Italy.

Council of Europe*

The Council of Europe (CoE, forty-seven Member States) was established on 5 May 1949 and is the first and most advanced regional system for the promotion and protection of human rights.

The Permanent Representative of Italy to the Council of Europe (in the post since 1 February 2019) is Amb. Michele Giacomelli. The Italian official Gabriella Battaini-Dragoni holds the position of Deputy Secretary-General of the Organisation until 28 February 2021. Since 2011, Italy has been home to an external office of the CoE in Venice, directed by Luisella Pavan-Woolfe. The activities of this office focus on the integration of minorities, gender equality, participation of citizens in democratic processes, the role of women in the Euro-Mediterranean context, the integration of the Roma and the Day of Remembrance. The Office participates in many projects with local academic institutions, including the Venice International University, the European Inter-University Centre for Human Rights and Democratisation – EIUC/ Global Campus for human rights and Venice Ca' Foscari University. It hosts training courses on human rights and democracy with special reference to southern shore Mediterranean countries.

In 2020, Italy contributed €36,610,055 to the activities of the CoE, of which €28,532,193 was allocated for the regular budget (in 2019, the overall contribution was €35,873,440, of which €28,532,193 for the regular budget).

The following pages will illustrate the activities of the Parliamentary Assembly and the Committee of Ministers with reference to Italy; those of seven bodies established by a treaty: the European Court of Human Rights, the Committee for the Prevention of Torture, the European Committee of Social Rights, the Advisory Committee on the Framework Convention for the Protection of National Minorities, the Group of Experts on Action against Trafficking in Human Beings Group of Experts on Action against Violence against Women and Domestic Violence and Lanzarote Committee on the Protection of Children against Sexual Exploitation and Sexual Abuse; and of four bodies established by the Committee of Ministers: Commissioner for Human Rights, the European Commission against Racism and Intolerance, the European Commission for Democracy through Law and the Group of States against Corruption.

As is coherent with the multi-year initiative calendar of various monitoring bodies of the Council of Europe, only some of these groups were able to analyse

* Pietro de Perini

the human rights situation in Italy in 2020. The main issues tackles (and from which have emerged documentation and recommendations) concerned violence against women, domestic violence, and other forms of discrimination against women (Committee of the Parties to the Istanbul Convention; European Committee of Social Rights), the conditions of migrants with particular reference to the issue of non-refoulement and the reception system in Italy (Commissioner for Human Rights, Committee of Ministers), social rights of children, families and migrants (European Committee of Social Rights), discrimination against Roma and Sinti communities (European Committee of Social Rights); the right to health (Committee of Ministers, European Committee of Social Rights).

From an Agenda 2030 perspective which takes the Sustainable Development Goals into account, these issues mainly concern Goal 3 (ensure healthy lives and promote well-being for all at all ages), Goal 5 (achieve gender equality and empower all women and girls), particularly Target 5.2 (eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation), and Goal 10 (reduce inequality within and among nations), particularly Target 10.2 (empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status) and Target 10.7 (facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies).

I Parliamentary Assembly

In the Parliamentary Assembly of the Council of Europe (PACE), made up of delegations from the national parliaments of the Member States of the CoE, eighteen members of the Senate and the Chamber of Deputies sit for Italy; there are an equal number of alternate members.

PACE is a forum for discussing the main issues underlying the Organisation's mandate and it has advisory functions in relation to all international conventions drawn up in this context. It elects the judges of the European Court of Human Rights, the Commissioner for Human Rights, the Secretary General of the CoE and their deputy.

The following are the members and alternate members (a) of Italian PACE in 2020: Simone Billi, Roberto Rampi, Marina Berlinghieri, Anna Maria Bernini, Francesco Berti (a), Maria Elena Boschi, Maurizio Buccarella, Pino Cabras (a), Sabrina De Carlo, Fabio Di Micco, Piero Fassino (a), Claudio Fazzone (a), Gianluca Ferrara (a), Roberto Paolo Ferrari (a), Emilio Floris, Marta Grande, Paolo Grimoldi, Barbara Guidolin (a), Francesco Laforgia (a), Francesco Lollobrigida (a), Gianni Marilotti (a), Gaspare Antonio Marinello, Augusta Montaruli, Gianluca Perilli, Daisy Pirovano, Catia Polidori, Alberto Ribolla (a), Maria Rizzotti (a), Tatjana Rojc (a), Gianfranco Rufa (a), Rosellina Sbrana (a), Filippo Scerra, Francesco Scoma (a), Simona Suriano (a), and Manuel Vescovi.

Concerning the role of Italian representatives within various Parliamentary Commissions in 2020: Piero Fassino fulfilled the role of vice-chairperson of the Committee on Political Affairs and Democracy, Roberto Rampi was the Vice-chairperson of the Committee on Culture, Science, Education and

Media, and Manuel Vescovi, who also holds the role of Vice-president of the Italian delegation, is the vice-chairperson of the Committee on Migration, Refugees and Displaced Persons.

In 2020, PACE did not adopt any resolutions or recommendations explicitly referring to the human rights situation in Italy.

II Committee of Ministers

On the subject of human rights, the Committee of Ministers (CM) relies on the work of the Steering Committee for Human Rights, an inter-governmental body composed of representatives of the forty-seven Member States which performs, among other things, standard-setting and follow-up.

The CM adopts recommendations regarding the Member States and on matters for which a common policy is agreed upon – in accordance with its role in the implementation of the European Social Charter (art. 29) – with the aim of asking some States to adapt their laws and public policies with the provisions contained in the Charter. In addition, it is ultimately responsible for monitoring the Framework Convention on National Minorities (art. 26). In this context, it adopts specific resolutions by country, based on the opinions of the Advisory Committee of the Framework Convention.

With regard to its role in relation to the European Court of Human Rights, the CM has the function of supervising the execution of judgments of the Court, ensuring that Member States act in accordance with the rulings issued by the same. The Committee terminates each case by adopting a final resolution. Finally, the CM may apply to the Court for a ruling on issues related to difficulties of interpretation of the judgments of the Court itself which would impede their implementation and if it finds that a Member State fails to comply with a final judgment, it may refer the issue to the Court.

In 2020, the CM adopted eleven final resolutions on the execution of the ECtHR judgments by Italy, regarding forty-six cases in total: CM/ResDH(2020)9 on the *Mele* case and seven other cases; CM/ResDH(2020)188 on the *Masciovecchio* case and seven other cases; CM/ResDH(2020)201 on the *Sharifi and others* case (vs. Italy and Greece) and three other cases; CM/ResDH(2020)229 on the *Savino and others* case; CM/ResDH(2020)263 on the *Alberti* case and one other; CM/ResDH(2020)264 on the *Elia S.R.L.* and two other cases, CM/ResDH(2020)265 on the *Nicolao and Lazzerotti* case and three other cases; CM/ResDH(2020)130 on the *Alonzi and others* case and 9 other cases; CM/ResDH(2020)131 on the *S.V.* case; CM/ResDH(2020)320 on the *Varanini and De Salvatore* case and o

has been included in a specific national database available to law enforcement agents. The Deputies invited the authorities to undertake that, in case they receive information indicating that the applicants risk treatment contrary to Art. 3 of the Convention or unlawful return, they will take all possible measures to secure the applicants' Convention rights. As regards general measures, the CM noted the additional information provided by the authorities on the current organisation and functioning of the reception system in the ports of the Adriatic Sea and the procedure followed on the arrival of migrants; noted however that certain shortcomings in reception services appear to persist

notably in Bari, and therefore invited the authorities to provide the Committee with updated, comprehensive information on the reception services in the ports of the Adriatic. Furthermore, noting with concern the information provided by an NGO under Rule 9.2 concerning incidents of collective expulsions to Greece from Italian ports in late 2019, invited the authorities to provide their firm assurance that migrants intercepted on ships arriving in the Italian ports are systematically provided with adequate information on their rights and granted access to reception services and the asylum procedures, clarifying also how this is ensured where reception services are located outside the ports' transit zones. The CM invited the authorities to provide a comprehensive and consolidated action plan or report that covers all unresolved issues by 15 June 2020 at the latest.

On the same day, the CM adopted another decision (CM/Del/Dec(2020)1369/H46-13) on the *Cordella and others* case (see *Yearbook 2020,* p. 404), concerning the authorities' failure to take the necessary measures to ensure the applicants' protection from the environmental pollution caused by the ex-ILVA steel plant in Taranto, and the lack of effective remedies enabling the applicants to obtain measures securing the depollution of the areas concerned. As regards individual measures, the CM noted that individual measures are linked to the adoption of general measures and invited the authorities to confirm the payment of the just satisfaction awarded by the European Court for costs and expenses. As regards general measures, the Deputies underlined the national authorities' responsibility under the Convention to put an end to the violations of the applicants' rights and to prevent similar violations, including their positive obligation under art. 8 of the Convention to regulate industrial activities so as to guarantee the effective protection of persons whose lives may be endangered by the risks inherent in these activities. Furthermore, the CM highlighted the importance of sustained political commitment at the highest political level to ensure that the current and future operation of the ex-ILVA steel plant no longer endangers public health and the environment, and the importance of implementing, fully and as rapidly as possible, the environmental plan setting out the necessary measures and actions to secure environmental and health protection. The Deputies noted the information provided by the authorities on progress to date in the implementation of the plan and on the monitoring mechanisms put in place; urged the authorities to secure the effective implementation of the plan independently of the outcome of the ongoing discussions over the future of the steel plant, and invited them to provide updates on the results achieved and the timeline for implementation of the remaining measures; in this context, invited also the authorities to clarify whether those responsible for the implementation of the environmental plan still have criminal and administrative immunity. Moreover, noting the diverging information provided by the authorities and the applicants' representative with regard to the quality of the air in Taranto, invited the authorities to submit updated information on this issue and on the impact of the continuing operation of the steel plant on the environment and the health of the local population. Finally, the CM also invited the authorities to rapidly inform the Committee about the measures envisaged, legislative or other, to address the problem of lack of effective remedies, whether civil, administrative, criminal or constitutional, capable of redressing the violations

established. All requested information should be provided by 30 June 2020 at the latest.

On 4 July, during its 1377th session, the CM adopted a decision (CM/Del/Dec(2020)1377/H46-18) on the *Nasr and Ghali* case (see *Yearbook 2017*, 305), concerning serious violations by Italy in the context of an "extraordinary rendition" operation in which the first applicant was abducted on Italian territory, handed over to CIA agents and brought illegally to Egypt where he was secretly detained and subjected to violent interrogations, while the second applicant was left for months without information about her husband's fate. Generally, noting also that while the investigation conducted by the Italian investigative and judicial authorities led to the conviction of 26 United States nationals and six Italian citizens, the CM highlighted the lack of adequate measures by the government to enforce the prison sentences imposed on the former, and the quashing of the convictions of the latter on grounds of state secrecy, ultimately led to their impunity. As regards individual measures, the Deputies noted that the just satisfaction awarded by the Court was paid to the applicants, that Mr Nasr had been released from detention by the time the Court gave its judgment and that his wife was free to join him in Egypt if she so wished. The CM profoundly regretted that the impunity resulting from the acts of the executive cannot be remedied, since the pardons and reduction in the sentences of the US perpetrators means that pursuing their extradition would be fruitless, and since it is impossible under Italian law to reopen proceedings once a person has been finally acquitted. The Deputies concluded, in the light of the foregoing, that no further individual measures are necessary or feasible. As regards general measures, welcoming the introduction of the crime of torture into Italian law as an important preventive and deterrent measure with regards to serious human rights violations such as those found in the present case, the CM called on the Italian authorities at a high level to deliver an unequivocal message to the intelligence services as to the absolute unacceptability of, and zero tolerance towards, arbitrary detention, torture and secret rendition operations. It welcomed the undertaking by the government to make every effort to ensure that the crime of torture is excluded from any future legislation granting collective reductions or remissions of sentence and insisted that the obligation to prevent impunity for serious human rights violations is given due consideration in any future decision on individual pardons. In reference to the government's improper invocation of state secrecy and noting that this led to the ultimate acquittal of the accused Italian military intelligence agents, called on the authorities to take measures to ensure that state secrecy is not in the future used in such a way as to undermine the effectiveness of criminal proceedings into serious human rights violations, for example by adding the crime of torture to those in relation to which state secrecy cannot be invoked. The information should be provided to the CM by 15 December 2020 at the latest.

On the same day, the CM adopted decision (CM/Del/Dec(2020)1377/H46-17), also on the *M.C. and others* case (see *Yearbook 2014*, 322), concerning a systemic problem stemming from the impossibility for persons accidentally contaminated following blood transfusions or by the administration of blood derivatives to obtain an annual adjustment based on the inflation

rate of the supplementary component (the "IIS") of the compensation allowance they benefit from. As regards individual measures, the CM noted that the authorities have compensated the applicant parties for the non-pecuniary damage suffered and the costs and expenses incurred and have moreover guaranteed them the full benefit of the annual adjustment of the IIS retrospectively and for the future; concluding that no further individual measures are required in this case. As regards general measures, the Deputies recalled that, in accordance with the indications in the judgment, the authorities at central or regional level had to pay to the persons accidentally contaminated (or their heirs) arrears corresponding to the adjustment of the IIS from the date the compensation allowance was granted to them, and guarantee that the IIS is henceforth submitted to an annual adjustment; also recalled that Italy has fully settled these questions for the beneficiaries falling under the competence of the central authorities. Noting that at regional level, the IIS is now submitted to an annual adjustment based on the inflation rate and regularly paid to the beneficiaries, the CM considered that no further general measures are necessary in these respects. Therefore, it invited the authorities to indicate whether, following the allocation of State funds to this effect, the arrears to be paid by the regional authorities were cleared according to the time-table announced to the Committee of Ministers (before the end of 2018); also requested them to clarify whether the sums thus paid to the beneficiaries covered any periods for which the domestic statute of limitations might have expired, as required under the judgment, and if this is not the case, to provide information on how they intend to resolve this problem.

On 1 October 2020, during its 1383rd session, the CM adopted a decision (CM/Del/Dec(2020)1383/H46-12) on the *Talpis* case (see *Yearbook 2018*, p. 309), concerning the ineffective and delayed response of the authorities to the applicant's complaints concerning domestic violence inflicted by her husband and the discriminatory aspect of such failings in the protection of women against domestic violence. As regards individual measures and in view of the information provided on the payment of the just satisfaction and the completion of the criminal proceedings against the aggressor, the Deputies considered that no further individual measures are required in this case. As regards general measures, the CM expressed satisfaction at the continued efforts of the Italian authorities attesting to their commitment to prevent and combat domestic violence and gender-based discrimination; welcomed in particular the adoption of law No. 69/2019 (so-called "Code Red") which further consolidates the comprehensive legal framework established since the ratification by Italy of the Istanbul Convention in 2013. It highlighted the crucial importance of an adequate, effective and swift response by law enforcement agencies and the judiciary to reported acts of domestic violence to guarantee victims' protection and at the same time, of ensuring that victims have effective access to adequate support and assistance. Recalling, in this context, their detailed request for statistical information concerning the implementation of the legal provisions criminalising domestic violence and harassment, the Committee noted the partial data provided by the authorities and expressed concern at the high rate of proceedings discontinued at pre-trial stage. It therefore called on the authorities to examine this issue and to inform them of their findings and conclusions and also to submit all the information previ-

ously requested together with updated data on the number of relevant judicial proceedings and their outcome. It further called on the authorities rapidly to develop a comprehensive data collection system with regards to protection orders and to provide the following statistical information, supported by relevant administrative and judicial decisions, and on the measures adopted or envisaged to ensure adequate and effective risk assessment and management by the relevant authorities notably with regards to the repetition and escalation of domestic violence and the victim's corresponding protection needs. The Committee noted with interest that law enforcement agencies now are required by law to establish mandatory training on gender-based violence for their agents, and encouraged the authorities to pursue their efforts to ensure that these agents receive systematic and comprehensive training in this field throughout their career, also drawing on the Council of Europe's expertise and training courses such as those offered by HELP, and invited them also to provide information on the relevant capacity-building for judges and prosecutors. Furthermore, the Deputies invited the authorities to keep the Committee informed of the progress achieved on the existing network of anti-violence centres and women's shelters and on the funding recently allocated to strengthen it, including in ensuring an adequate geographical distribution of these structures. Finally, noting with concern that, despite the wide range of measures already adopted, gender stereotypes continue to be present in Italian society, the CM strongly encouraged the authorities to intensify their efforts to eradicate them and achieve changes in cultural behaviours, including by drawing inspiration from the Committee's Recommendation CM/Rec(2019)1 on preventing and combating sexism. Any information on measures taken and progress should be provided to the Committee by 31 March 2021 at the latest.

On the same day, the CM also adopted a decision on the *De Tommaso* case (CM/Del/Dec(2020)1383/H46-11), concerning first, the quality of some provisions in the Italian legislation authorising the courts to impose preventive measures, notably involving restrictions of the freedom of movement, on individuals considered to pose a danger to society and, second, the lack of public hearings in the relevant court proceedings. The CM considered that no further individual measure is necessary since the just satisfaction awarded by the Court was paid and the preventive measures have been lifted. As regards general measures and welcoming the fact that the individuals concerned have the possibility, since 2011, to request the courts to hold a public hearing, the Deputies considered that no further measure is required in response to the violation of Art. 6, paragraph 1, found in the judgment. Moreover, the CM regretted the absence of comprehensive information from the authorities on the measures adopted and envisaged to bring the provisions defining some categories of individuals who could be subjected to preventive measures and the content of some of these measures in line with the requirements of art. 2 of Protocol No. 4 highlighted in the judgment. The CM considered that recent interventions by the legislator, by the Court of Cassation and the Constitutional Court appear to have provided sufficient clarity in respect of two of the three categories of individuals to whom preventive measures could be applied and expressed satisfaction at these positive developments and requested the authorities to provide their assessment of the current state of the domestic law

and case-law as regards the possibility to impose such measures on the third category of individuals (those who, on the basis of factual evidence, can be regarded as "habitually living, even in part, on the proceeds of crime") and to provide information on any measures envisaged. Finally, the Committee called upon the authorities to also remedy the shortcomings identified by the Court as regards some of the preventive measures which can be imposed, including the prohibition on attending public meetings. The information should be provided by 31 March 2021 at the latest.

On 3 December 2020, during its 1390th session, the CM adopted a decision (CM/Del/Dec(2020)1390/H46-14) on the group of cases *Olivieri and others*, concerning several shortcomings affecting the functioning and the effectiveness of a compensatory ("Pinto") remedy available since 2001 to victims of excessively long judicial proceedings (see *Yearbook 2017*, p. 312). In this decision, the CM noted that the question of individual measures has been resolved in three repetitive cases of this group and decided to close their supervision of the execution of these cases by adopting Final Resolution CM/ResDH (2020)365. It requested the Italian authorities to provide without further delay complete information on the payment of the just satisfaction in the case of *Gaglione and others* and on the status of the domestic proceedings in the *Scervino and Scaglioni case*. As regards general measures, the Deputies noted the information provided in the *Arnoldi* and *Olivieri and others* cases and the efforts of the Italian authorities to ensure a reasonable length of the preliminary investigations and the administrative proceedings; noted however that this information does not address the issues raised by these judgments related to the functioning of the "Pinto" remedy. The CM noted in this connection with deep regret that, despite also the intensive efforts undertaken by the Secretariat to follow up the Committee's request with the authorities, no relevant and comprehensive information was provided on the issues highlighted by the Committee in its decision of September 2019 (see *Yearbook 2020*, p 400). Therefore, the Committee underlined the importance to ensure the effective functioning of the "Pinto" remedy and to prevent a new flow of repetitive applications to the Court stemming from shortcomings of this remedy, and once again called on the authorities to rapidly address the outstanding questions in this group of cases and urged them to provide the information above by 31 March 2021.

In 2020, the CM adopted two resolutions related to the European Committee of Social Rights decisions, adopted within the procedural framework of collective complaints provided for by the 1995 Protocol. On 22 January, the CM adopted Resolution CM/ResChS(2020)1 on the decision on the complaint presented by *Unione Generale Lavoratori- Federazione Nazionale Corpo forestale dello Stato* (UGL-CFS) and *Sindacato autonomo polizia ambientale forestale* (SAPAF) (143/2017, see Yearbook 2018, p. 225) which sets out Italy's violation of articles 5 ESC-R and 6(2) ESC-R. The second resolution, adopted on 11 March 2020 (CM/ResChS(2020)2), concerned the decision of the European Committee of Social Rights on the complaint introduced by the *Confederazione generale italiana del lavoro* (CGIL) (158/2017, see *Yearbook 2017*, p. 207), which found that the Italian authorities acted in violation of art. 24 ESC-R. In the resolutions, the CM noted the decisions of the Euro-

pean Committee of Social Rights and the additional information provided by the Italian Government and referred to their next report concerning the relevant provisions of the Charter, on any new developments regarding their implementation, notably in respect of any measures taken to bring the situation in conformity with the Charter.

On 25 November 2020, the CM adopted Resolution CM/ResCSS(2020)10 on the application of the European Code of Social Security by Italy (regarding the period 1 July 2018-30 June 2019), in reference to the following parts of the Code: V (Old-age benefit), VI (Work accident and occupational disease benefit), VII (Family benefit), VIII (Maternity benefit). On the basis of the annual report provided by the Italian Government and the examination of that report by the ILO Committee of Experts on the Application of Conventions and Recommendations, the CM found that the law and practice in Italy continue to give full effect to Parts VI, VII and VIII of the Code and that they also ensure the application of Part V, subject to re-establishing the right to a reduced old-age pension after fifteen years of contributions. The Committee decided to invited the Italian Government to provide the following information: to demonstrate in its next report, with appropriate statistical data, that the number of residents having attained the age of sixty-seven is not less than 10% of the total number of residents under that age, but over fifteen years of age; to provide in its next report more detailed calculations of the old-age pension which a standard beneficiary would be entitled to and to calculate the replacement rate in accordance with Titles I-III of Art. 65 of the report form for the Code, i.e. based on a period of contributions of not more than thirty years for a person drawing his/her pension at the normal retirement age; to re-establish the right of all persons protected under Part V of the Code to a reduced social insurance pension after fifteen years of contributions, to ensure conformity with Art. 29(2)(a) of the Code; to confirm in its next report that the medical services provided by INAIL or the NHS to victims of an employment injury include all the medical services listed in Art. 34(2) of the Code without co-payment.

Finally, in 2020, the CM adopted three resolutions related to the conferral or renewal of the European Diploma for Protected Areas for the following Italian areas: the Sasso Fratino Nature Reserve (FC) (CM/ResDip(2020)15, renewal); the Migliarino San Rossore Massaciuccoli Nature Reserve (PI) (CM/ResDip(2020)7, renewal); and the Gallipoli Cognato Regional Park (MT) (CM/ResDip(2020)1, conferral).

III European Court of Human Rights

The European Court of Human Rights (ECtHR) guarantees the respect of the commitments laid down in the ECHR and its protocols by Member States of the CoE.

On 5 May 2019, Raffaele Sabato was took up the role as the Italian judge on the ECtHR, taking over from Guido Raimondi who had also been the President of the ECtHR since September 2015.

The statistical data provided by the Court, and updated in December 2020, show that the total number of complaints pending against Italy amounted 3450, around 5.6% of the total. However, there are higher numbers of complaints pending with respect to the Russian Federation (13,650, 22% of the total), Turkey (11,750, 19%), Ukraine (10,400, 16.8%) and Romania (7550, 12.2%).

In 2020, the Court received 1497 valid individual complaints about a violation of rights contained within the ECHR by Italy (1454 in 2019 and 1692 in 2017). In the same period, 1080 complaints were declared inadmissible or removed; seventeen were judgments of a substantial nature, fourteen of which found at least one violation of the Convention. Overall, the Court found the following violations: 1 with regard to the right to life pursuant to art. 2 ECHR; four with regard to the right to a fair trial pursuant to art. 6 ECHR; five for excessive duration of proceedings pursuant to art. 6 ECHR; two with regard to private and family life pursuant to art. 8 ECHR; one with regard to freedom of expression pursuant to art. 10 ECHR; one with regard to the prohibition of discrimination pursuant to art. 14 ECHR; one with regard to protection of property pursuant to art. 1, Protocol No. 1 ECHR.

452 complaints were communicated to the State in view of a hearing on their merits. The ECtHR also received ninety-six requests for urgent measures pursuant to art. 39 of the Court's regulations, mostly regarding the suspension of deportation proceedings for as many applicants, only 4 of which were granted by the ECtHR.

An analysis on the Court's judgments concerning Italy in 2020 is presented in Part IV, Italy in the Case-law of the European Court of Human Rights.

IV Committee for the Prevention of Torture

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was established by the 1987 Convention of the same name, conceived as complementary to the regulations under art. 3 of ECHR which sets forth an absolute ban on torture. The CPT is a body composed of independent experts and has one member for each State Party to the Convention for the Prevention of Torture (all the CoE countries are party to it). The members of the Committee are elected by the Committee of Ministers. The current Italian CPT member is Gaia Pergolo, who was appointed by the CM with Resolution CM/ResCPT(2019)3 and will be in office until 19 December 2023.

The Committee's main function is to verify, by means of inspections, the treatment of persons deprived of their liberty in order to strengthen, if necessary, their protection from torture and inhuman or degrading treatment or punishment (art. 1). CPT is not an investigative body, but a preventive body. At the end of each visit, the Committee draws up a detailed report and sends it to the State involved, to which it requests an answer in relation to any critical issues raised in it. The action of the CPT is based on the principles of cooperation with national authorities and confidentiality. Therefore, its reports and the responses of the Governments are initially reserved and only subse-

quently, at the request of the country concerned, may they be made public together with the replies and observations provided by the national authorities.

In 2020, the CPT conducted fourteen visits in the following countries: Azerbaijan, Bulgaria, Croatia, Finland, France, Germany, Greece, Kosovo, Malta, Monaco, Moldovan Republic, North Macedonia, Spain and Ukraine. In the same year, the CPT published fifteen reports related to visits carried out in the following CoE Member States: Bulgaria, Denmark, Greece (two reports), Hungary, Iceland, Ireland, Italy, Moldovan Republic, Poland, Portugal, Turkey, Ukraine (two) and the United Kingdom.

Overall, the CPT has conducted fourteen visits in Italy (seven periodic visits and seven *ad hoc)*. The most recent visit was from 12 - 22 June 2019 in order to evaluate the situation of detained persons in high or maximum security (the so-called "regime 41-*bis*") and other isolation and segregation methods, such as the so-called "daytime isolation". On the request of the Italian Government, the report of the Committee (CPT/Inf(2020)2) and the Authorities' response (CPT/Inf (2020)3) were published jointly on 20 January 2020 (see *Yearbook* 2020, pp. 260-265).

V European Committee of Social Rights

The European Committee of Social Rights (ECSR) was established pursuant to art. 25 of the European Social Charter of 1961 in order to determine whether the legislation and practice of States Parties comply with the provisions of the European Social Charter, its Protocols and the European Social Charter (revised) (ESC-R). Currently, the Committee is composed of fifteen independent experts elected by the Committee of Ministers for a six-year mandate renewable only once. The Italian expert Giuseppe Palmisano was re-elected for the period 2016-2022, becoming the President of the Committee in 2017.

Italy ratified the European Social Charter in 1965 and the revised European Social Charter in 1999, accepting ninety-seven of its ninety-eight paragraphs. The only non-accepted provision is art. 25 ESC-R, which protects the right of workers in the case of the insolvency of their employer. In 2002, the Committee of Ministers agreed that every five years, countries must also inform the European Committee of Social Rights on the status of rights protected under provisions that they have not accepted. Italy's most recent communication was in 2019 (see *Yearbook* 2020, p.265-266). If this does not happen, the next examination of the provision not accepted by Italy will take place in 2024.

In reference to the analysis of the provisions that were previously accepted, from 1967 to 2016, the Italian Government presented twenty annual reports on the application of the 1961 Charter and seventeen on the revised Charter. Based on these reports, each year the Committee adopted conclusions on the state of protection of social rights in Italy. The most recent conclusions were published in March 2020 and refer to the seventeenth report, presented (late) on 10 May 2019 (see *Yearbook* 2020, p. 266-274). For 2020, no conclusions were adopted on any specific group of articles of the Charter.

As required, the Italian Government presented a simplified follow-up report on the decisions on the decisions regarding the collective complaints in which the Committee found a violation of the Charter by Italy. The Italian Govern-

ment's report was analysed alongside those of seven other countries (Belgium, Bulgaria, Finland, France, Greece, Ireland, Portugal).

The Committee follow-up report "*Findings 2020"* with respect these decisions concerning Italy (adopted in January 2021) contained six decisions:

European Roma Rights Centre (ERRC) (No. 27/2004), decision of 7 December 2005 (see *Yearbook* 2011, p. 218). In this third follow-up evaluation, after summarising its decision and reviewing the most recent communications from the Italian Government, the Committee adopted the following decisions. With respect to the violation of art. E ESC-R (non-discrimination), read in conjunction with art. 31(1) ESC-R (effective access to adequate housing), awaiting updated information regarding the implementation of the National Strategy for the inclusion of Roma, Sinti and Travellers of 2021 concerning housing, the Committee concluded that the situation in Italy the situation has not been brought in compliance with the provisions of the Charter. With respect to violation of art. E ESC-R), read in conjunction with art. 31(2) ESC-R (reduce homelessness), in reference to the lack of clarity about forced evictions of Roma, Sinti and Traveller communities from settlements and the remedies provided, the Committee reached the same conclusion. With respect of the violation of art. E ESC-R read in conjunction with articles 31(1) and 31(3) ESC-R (cost of accessible housing), and in the light of the previous findings and the persistence of segregated housing for these groups, the Committee came to the same decision.

Centre on Housing Rights and Evictions (COHRE) (58/2009), decision of 25 June 2010 (see *Yearbook 2011*, p. 218-220). In this third follow-up evaluation, the Committee considered its decisions taking into account the information provided by the Italian Authorities. With respect to the violation of art. E ESC-R, read in conjunction respectively with articles 31(1), 31(2) and 31(3) ESC-R, (which were similar to issues that arose during the aforementioned ERRC case), the decisions of the Committee reiterated the follow-up evaluation in this case. Regarding the violation of art. E ESC-R read in conjunction with art. 30 (ESC-R) (the right to protection against poverty and social exclusion), the Committee held that, considering all available information and evaluating it with reference to the right to housing, the situation has not been brought in compliance with the Charter. A similar evaluation by the Committee, with respect to the violation in relation to art. E read in conjunction respectively with art. 16 ESC-R (right of the family to social, legal and economic protection) and art. 19(4) lett. C ESC-R (equal treatment for migrants – housing). With respect to the violation of art. E ESC-R read in conjunction with art. 19(1) ESC-R (adequate and free services for migrants), the Committee held that the Italian Authorities have not provided sufficiently detailed and updated information on misleading propaganda on emigration, particularly on preventing racism and xenophobia in politics and, more specifically, of misleading propaganda against migrants from Roma and Sinti communities. It found that the situation continues not to comply with the Charter.

International Planned Parenthood Federation – European Network (IPPF EN) (87/2012), decision of 10 September 2013 (see *Yearbook 2015*, p. 216). In the

second follow-up evaluation of this decision, the Committee, in accordance with usual practice, summarised the decisions taken and the updates provided by the Italian Government. On the basis of this information, the Committee gives the following evaluations: With reference to art. 11(1) ESC-R (remove as far as possible the causes of ill-health), requested that the Italian authorities provide a series of missing information on crucial aspects on the case, in particular: whether and with what measures the Italian Regions are effectively regulating health services to ensure that women have access to safe and effective voluntary interruptions of pregnancy in their regions; data on illegal abortions; the number of "conscientious objectors" among staff members in pharmacies and family planning clinics; and the impact that these numbers may have on women's effective access to abortions. In light of these considerations, the Committee found that the situation in Italy is still in compliance with the Charter. With respect to the other violation found in the 2013 decision – regarding art. E ESC-R read in conjunction with art. 11 ESC-R (right to protection of health) – and based on previous considerations, the Committee confirmed its conclusion with regard to women who wish to terminate their pregnancy and the right to health due to problems in accessing abortion services.

Confederazione Generale Italiana del Lavoro (CGIL) (91/2013), decision of 12 October 2015 (see *Yearbook 2017*, 207). In this second follow-up evaluation, the Committee analysed the updated situation regarding the violations found in 2013 decision. With respect to art. 11(1) ESC-R, the Committee, following the same reasoning as in the IPPF EN case (see above) held that, pending necessary information, the situation cannot be considered in compliance with the Charter with respect to a woman's right to access voluntary interruption of pregnancy in line with regulations applicable in all cases, including when there is a high number of doctors and healthcare staff in objection. Following a similar reasoning, the Committee concluded that the situation continues to violate art. E ESC-R read in conjunction with art. 11(1) ESC-R. With respect to art. 1(2) ESC-R (rights of the worker to earn a living in an occupation freely entered upon), the Committee held that the situation has not been brought into compliance regarding discrimination against non-objector medical staff. In this regard, the Committee requested that the Italian authorities provide information: firstly, on the way in which measures to protect against workplace discrimination and harassment (lgs.d. 216/2003) are effectively applied with regard conscientious objectors; secondly, on steps taken to raise awareness on discrimination based on religious beliefs, focusing on conscientious objectors; finally, on the monitoring of the careers of objectors and non-objectors. This information, and other data, is necessary for the Committee to assess whether there is any direct or indirect discrimination on the workload and career prospects of non-objector healthcare workers compared to staff who oppose voluntary interruption of pregnancy. On the basis of these conclusions, the Committee found that the situation continues to present a violation of the Charter with reference to art. 26(2) ESC-R (workplace harassment), with reference to the protection of healthcare workers who are not conscientious objectors from psychological harassment.

Associazione Nazionale Giudici di Pace (102/2013), decision of 5 July 2016 (see *Yearbook* 2017, p. 208). In this second follow-up evaluation regarding this case, the Committee holds that the situation regarding the violation of art. E ESC-R read in conjunction with art. 12(1) ESC-R (social security system) has been brought into compliance with the Charter and therefore decides to end the periodic monitoring of this case.

La Voce dei Giusti (105/2014), decision of 18 October 2016 (see *Yearbook* 2015, p. 215). In this second follow-up evaluation, the Committee found that the situation with respect to the violation of art. E ESC-R read in conjunction with art. 10(3) ESC-R (provisions to ensure professional training) has been brought into compliance with the Charter and therefore decided to end the periodic monitoring of this case.

In 2020, the Committee adopted two decisions on collective complaint procedures provided for by the 1995 Optional Protocol (both decisions were made public at the start of 2021).

The decisions concerning complaints 144/2017 and 146/2017, presented respectively by the *Confederazione Generale Sindacale* (CGS) and by the *Associazione Professionale e Sindacale* (ANIEF), regarding the alleged violation of articles 1 (Right to work), 4 (Right to a fair remuneration), 5 (Right to organise), 6 (Right to bargain collectively), 24 (Right to protection in cases of termination of employment) and E (Non-discrimination) ESC-R. The applicant trade unions argued that Italian contractual law for temporary contracts in the public sector (particular with regards schools) allowed the improper renewal of these contracts, undermining the workers' enjoyment of the aforementioned protection. Both complaints were declared admissible on 12 September 2017.

In the first of the two decisions (adopted on 9 September 2020), after a brief overview of the complaint and the Italian Government's response and revisiting all relevant national and international law, the Committee noted that, while the GCS trade union claimed that the precarious job situation of a person with a temporary contract in the public sector (in particular in the public education sector) implicates a violation of various provisions of the Charter (articles 1(1), 1(2), 4(1), 4(4), 5, 6(4) and 24 and E ESC-R read alone or in conjunction with each art. listed), the applicants' complaints under various provisions of the Charter were presented with insufficient justification to allow for a separate evaluation for each provision. Therefore, the Committee decided to evaluate this complaint solely pursuant to art. 1(2) ESC-R, on eliminating all forms of workplace discrimination and banning any practice that may interfere with a right of the worker to earn a living in an occupation freely entered upon, and at the same time dismissed the accusations raised under the other provisions of the Charter as ill-founded.

In evaluating the provisions of the Charter in question, the Committee found that, although the public education sector is subject to specific legislation and exemptions, the circumstances of public school teachers enrolled in the closed number ranking lists (ranking lists for teachers with a limited number of teaching positions available, depending, *inter alia*, on experience and qualifications) is in some ways comparable to other public sector teachers regarding

access to permanent contracts in terms of length of time and means. It therefore decided to examine firstly the status of public sector workers, including public sector teachers enrolled in the ranking lists compared to the private sector and secondly the status of public sector workers who were not enrolled in the ranking lists compared to those enrolled in ranking lists and other public sector workers.

An examination of the available evidence led the Committee to declare that the status of public sector workers and public sector teachers enrolled in the closed number ranking lists and hired under annual contracts does not constitute discriminatory behaviour with respect to private sector workers, which would be incompatible with art. 1(2) of the Charter. Consequently, it found that the status of public sector workers and of public sector teachers enrolled in the ranking lists was compatible with the provisions of the Charter. However, the Committee found that the circumstances are different for public sector teachers who are not enrolled in these ranking lists: they do not have the right to annual contracts but can be hired under a fixed-term contract for periods of less than a year, to cover a vacant post during the academic year (September to the end of June), or for brief periods. Focusing on the status of public education staff who are not enrolled in the closed number ranking lists and hired under successive (interrupted) contracts for an overall duration of over thirty-six months, the Committee found that there had been a disproportionate interference in their right to earn a living in an occupation freely entered upon, due to the lack of preventative and reparative safeguards against the misuse of temporary contracts, alongside judicial uncertainty due to repeated normative and judicial changes and to the limited possibility of getting permanent contracts regardless of competences or work experience. Consequently, the Committee holds that this situation violates art. 1(2) of the Charter.

The Committee similarly proceeded with respect to a second decision adopted in 2020 (presented by ANIEF) complaining of Italy's violation of the same provisions of the European Social Charter (revised). With regards the provisions recalled in the trade union's complaint, having considered all the available information, the Committee decided to evaluate this complaint solely pursuant to art. 1(2) ESC-R and art. E ESC-R (Non-discrimination) read in conjunction with art. 24 ESC-R (Right to protection in cases of termination of employment) dismissing the complaints made under other provisions as ill-founded. With reference to the first provision, as in the CGS complaint decision, the Committee held that the situation of public education workers enrolled in the limited-place ranking lists and hired under annual contracts was not discriminatory with respect to private sector workers. Consequently, this group of workers' situation complies with the provisions of the Charter. In the present case, the Committee also considered the situation of public education staff members who are not enrolled in the limited-place ranking lists and hired under successive (interrupted) contracts for an overall duration of over thirty-six months, in violation of art. 1(2) ESC-R. With reference to this category of worker, the Committee found that there had been a disproportionate interference with their right to earn a living in an occupation freely entered upon, due to the lack of preventative and reparative safeguards

against the misuse of temporary contracts, alongside judicial uncertainty, due to repeated normative and judicial changes and to the limited possibility of getting permanent contracts regardless of competences or work experience. In reference to set of circumstances analysed, the Committee found that the lack of renewal of temporary contracts or that those contracts are not automatically translated into permanent contracts cannot be considered as a termination of employment contrary to art. 24 ESC-R. Furthermore, according to the analysis of the Committee, the applicants' claims do not show any violation of art. E ESC-R in conjunction with art. 24 ESC-R.

During this period, the Committee declared two collective complaints admissible. The first was presented by the *Sindacato autonomo Pensionati Or.S.A.* (187/2019), registered on 3 December 2019, with respect to articles 4(1) (Right to a fair remuneration), 12(1) (Right to social security), 16 (Right of the family to social, legal and economic protection), 20 (Right to equal opportunities and equal treatment in employment without discrimination on the grounds of sex) and 23 (Right of elderly persons to social protection) ESC-R regarding the provisions introduced by art. 1(41) of law 8 August 1995, No. 335 (Compulsory and complementary reform of the pension system) and successive amendments, regulating the pension system for surviving or dependent spouses. The Committee declared the complaint admissible on 20 October 2020. The second was presented by the *Confederazione Generale Sindacale CGS, Federazione GILDA-UNAMS and Sindacato Nazionale Insegnanti Di Religione Cattolica* (192/2020), registered on 6 March 2020 with respect to articles 1(1) and (2) (Right to work), 4(1) and (4) (Right to a fair remuneration), 5 (Right to organise), 6(4) (Right to bargain collectively), 24 (Right to protection in cases of termination of employment) and E ESC-R (non-discrimination) read alone or in conjunction with any of these provisions. The applicant trade unions claimed that the Catholic religious education teachers working with a temporary contract for more than thirty-six months had been treated in a discriminatory manner (in comparison to other categories of teachers with the same length of service under a temporary contract) regarding access to a permanent contract through recruitment procedures provided for by l.d. 29 October 2019 No. 126, converted in law 20 December 2019, No. 159, in violation of the aforementioned provisions of ESC-R. The decision on its admissibility was adopted on 9 December 2020.

VI Commissioner for Human Rights

The Commissioner for Human Rights is an independent non-judicial institution established by the Committee of Ministers' Resolution (99)50 of 7 May 1999. On 1 April 2018, Dunja Mijatovic (Bosnia-Herzegovina) was elected Commissioner for Human Rights of the Council of Europe by the PACE. Mijatovic had previously served as the OSCE Representative on Freedom of the Media (see in this Part, 4.3), succeeding Nils Muižnieks (Latvia, 2012-2018), and will be in the role until April 2024.

The Commissioner's duties are to promote effective respect for human rights, to support the 47 Member States in implementing the relevant CoE standards and to promote education and awareness of human rights. Its main activity is to conduct a permanent

dialogue with Governments of the Member States, including visits to their respective territories. At the end of the mission, the Commissioner draws up a report that includes both an analysis on human rights and the improvement thereof; this report is published and spread widely. In addition, the Commissioner conducts follow-up visits to evaluate the progress made regarding the implementation of the previous recommendations and relevant reports are also rendered public.

Furthermore, during the year in question, the Office of the Commissioner published the reports related to the visits conducted in 2019 in Bulgaria and Turkey and (in 2020) in the Moldovan Republic. The correspondence among the representatives of the CoE Member States' institutions was intense. Specifically, the Commissioner sent letters requesting information on specific human rights situations in: Azerbaijan, Bosnia-Herzegovina, France, Italy, Malta, Poland, Russian Federation, Slovak Republic, San Marino, Slovenia, Spain, Switzerland and the United Kingdom.

Since its establishment, the Commissioner for Human Rights has conducted five visits in Italy. The last was held from 3-6 July 2012 and aimed to examine a series of critical issues, focusing on the excessive duration of judicial process and protection of the rights of Roma and Sinti communities, migrants and asylum seekers. The subsequent report was published on 18 September 2012 (CommDH(2012)26) (see *Yearbook 2013*, p. 255-262). Although their last visit and report took place five years ago, the Commissioner has kept up a dialogue with the Italian authorities through various letters requesting clarifications, especially related to policies on Roma minorities and the management of migrants, refugees and asylum seekers (see, for example, *Yearbook 2017*, p. 209-212 and *Yearbook 2018*, p. 223-226). In 2020, Italy was subject to two declarations and a letter from the Commissioner, all on the issue of migration and cooperation with the Libyan Coastguard.

The first of these documents was a declaration of 31 January 2020; on 2 February, after noting the forthcoming automatic renewal of the Memorandum of Understanding between Italy and the Libyan authorities of 2017, the Commissioner requested that the Italian Government immediately suspend the ongoing cooperation activities with the Libyan Coastguard that impact on the return of persons intercepted at sea to Libya until clear guarantees of human rights compliance are in place in the country. Furthermore, according to the Commissioner, any additional support to the Libyan Coast Guard should also be postponed until the latter can ensure compliance are in place. In the meantime, Italy, as well as other member states, should support the efforts of international organisations to secure the release of refugees, asylum seekers and migrants from places of detention in Libya, and facilitate the creation of safe humanitarian corridors. To prevent further deaths at sea, they also need to make sure enough ships specifically dedicated to search and rescue are deployed in the Mediterranean Sea.

The issue was taken up again in the letter addressed to the Minister of Foreign Affairs Di Maio (CommHR/DM/sf 006-2020 – sent on 13 February 2020). In this letter, the Commissioner reiterated her concern about certain types of assistance provided to Libya, in particular to the Libyan Coast guard (for reasons described above) and about the automatic renewal of the Memorandum. The Commissioner noted the announcement, on 9 February 2020, of the Minister's submission to the Libyan authorities of a proposal that would

amend this Memorandum with the aim of guaranteeing better protection for migrants and promoting migration management that is in full compliance with the Geneva Convention and other international human rights norms. Awaiting the conclusion of these discussions and given the safety situation in conflict-torn Libya and the great amount of evidence pointing to serious human rights violations faced by migrants and asylum seekers returned there, the Commissioner called upon the government to suspend the co-operation activities in place with the Libyan Coast Guard that impact on the return of persons intercepted at sea to Libya.

In the specific context of the discussions with the Libyan authorities concerning the amendment of the Memorandum, the Commissioner invited the Italian Authorities to carefully consider the detailed recommendations in her Recommendation "*Lives saved Rights protected Bridging the protection gap for refugees and migrants in the Mediterranean*", published in June 2019. In particular, the Commissioner asked the Government to consider that any activity envisaged should be preceded by thorough human rights risk assessments, which should look, inter alia, at the impact co-operation activities may have on the right to life of migrants and asylum seekers, freedom from torture or inhuman or degrading treatment, protection from refoulement, and the rights to liberty and private and family life. The Commissioner drew the Government's attention to the need to develop risk mitigation strategies, setting out the steps that will be taken to ensure that actual human rights violations do not materialise. These must be complemented by monitoring mechanisms, composed of independent and impartial actors, which continuously assess the impact of any activities implemented on the human rights of those concerned. Finally, according to the Commissioner, an effective system of redress should be established for those who nonetheless consider that the enjoyment of their rights has been affected by the co-operation activities. In addition to requesting updates on the aforementioned measures, the Commissioner assured the Government that she will continue to call for more solidarity from Council of Europe member states with those countries which, like Italy, are on the frontline of migration movements to Europe. This commitment by the Commissioner in her letter aims to improve co-operation to ensure the effective preservation of life and the protection of the human rights of those at sea, including through responsibility sharing for adequate rescue capacity and the timely disembarkation of those rescued and to impress upon all member states the need to support the efforts of international organisations to provide protection to refugees, asylum seekers and migrants in Libya, and to contribute to safe humanitarian corridors, evacuation and resettlement programs.

In his reply to this letter, sent on 22 February and signed by the Permanent Representative of Italy to the Council of Europe, the Italian Government defended the effectiveness of the Memorandum in countering illegal trafficking of human beings along the central Mediterranean route and in reducing the number of attempts at crossing the sea and thus the death toll, while recognising that there is room for improvement in the cooperation established in 2017 with Libya. On the basis of data collected since this agreement was established, Italy's overall objective has been to guarantee better protec-

tion to migrants and asylum seekers in Libya and progressively replace the current system based on detention centres with new formulas, adhering to the principles of the rule of law, victim-centred and human rights oriented. The letter of reply highlighted Italy's commitment in this regard, strengthening its partnership with initiatives of the international community (United Nations, UNCHR and IOM in particular). To this regard, the letter claimed that as of the time of writing, Italy remained the only European country conducting direct humanitarian evacuations of hundreds of refugees from Libya straight into its own territory, ensuring their integration and wellbeing in Italian society.

The reply then briefly presented some of the amendments that Italy has proposed to the cooperation agreements between Italy and Libya, which were still being discussed at time of writing. These included: explicit references to and acceptance of international humanitarian and human rights law, and a number of actions in order to improve conditions of migrants held in official centres, while those in a situation of vulnerability (i.e. women and children) should be immediately released. When conditions allow, a new system should be established, placed under the responsibility of the Libyan Ministry of Justice, based on the rule of law, on appropriate judicial procedures and on the principles of fair trial. The final part of the letter records Italy's appreciation for the support of the international community, including efforts in supporting a substantial and durable stabilization of Libya which would be instrumental in creating a political, security and rule of law environment conducive to a more effective management of all aspects of the complex and delicate migratory issue in the country.

In the third document, which was a declaration published on 16 April 2020, the Commissioner stated that despite the unprecedented challenges European countries face due to COVID-19, saving lives at sea and disembarking survivors in a safe port must continue. This request was directed at all Member States, although there is particular concern about the several measures and practices adopted in Italy and Malta which led to the closure of ports to NGO vessels carrying rescued migrants, and to the discontinuation of activities to co-ordinate rescue operations and disembarkation of those in distress. This further aggravated existing gaps in SAR operations in the Central Mediterranean. Mindful of the hardship faced by Italy and Malta, the Commissioner called on all Council of Europe member states, including flag states, to provide effective support and assistance in finding quick solutions (including temporary ones, where necessary), and to ensure that coastal states are not left to tackle this alone. The Commissioner reiterated that the COVID-19 crisis could not justify knowingly abandoning people to drown, leaving rescued migrants stranded at sea for days, or seeing them effectively returned to Libya where they are exposed to grave human rights violations.

Among the Commissioner for Human Rights' work in 2020, the online publication of various Human Rights Comments (short posts in which the Commissioner analyses and summarises relevant human rights situations in Europe) is particularly noteworthy). Over the year, six comments were published (seven in 2019, seven in 2018, ten in 2017). Two of these refer specifically to the human rights situation in Italy.

Comprehensive sexuality education protects children and helps build a safer, inclusive society (21 July 2020). In this comment, the Commissioner summarised the current state of implementation of sexuality education in schools in the various CoE Member States. Italy is mentioned in reference to the governmental initiative of 2015 to prepare "National Guidelines for Education to Affectivity, Sexuality and Reproductive Health in Schools", which was stopped due to growing resistance to education on sexuality and the stigmatisation, often channelled through disinformation campaigns on the content of such education, of those partaking in it.

Time to take action against SLAPPs (27 October 2020). In this post, the Commissioner deals with the long-standing issue of so-called Strategic Lawsuit Against Public Participation (SLAPP), specious lawsuits sometimes used by the rich and powerful in some CoE countries to censor, harass and ultimately suppress critics, in particular journalists. Two examples come directly from Italy, where defamation is still a criminal offence: the case of Federica Angeli, a journalist who is known for her thorough investigations into the Mafia, and has had to fight over 120 lawsuits; and the case of the provincial councillor in charge of agriculture and by apple farmers in the Province of Bolzano, who brought criminal court proceedings against environmental activists and the publisher of a book denouncing the high levels of pesticide use in the region.

VII European Commission against Racism and Intolerance

The European Commission against Racism and Intolerance (ECRI), established in 1993, is a monitoring body of the Council of Europe specialised in combating any form of racism, xenophobia, anti-Semitism and intolerance in a human rights perspective. The members of ECRI remain in office for five years. They are selected for their moral authority and their recognised experience in the field of combating racism, xenophobia, anti-Semitism and intolerance; they act on an individual basis and independently. The Commission is composed by a member and, if a government so wishes, a deputy member for each State of the Council of Europe. In 2018, the Italian expert was Vitaliano Esposito. Constance Hermanin was an alternate member. An Italian official, Stefano Valenti, was responsible for the External Relations of the Commission Secretariat, part of the Directorate-general Human Rights and the Rule of Law of the Council of Europe.

The mandate of the ECRI covers all measures to combat violence, discrimination and prejudice against people (or groups of people) on the basis of racial, linguistic, religious, national, or ethnic preconditions. The Commission conducts an in-depth analysis of the situation regarding racism and intolerance in each of the Member States of the CoE and writes suggestions and proposals by drawing up reports. The report is on the basis of an analysis of documentary sources, site visits and a confidential dialogue with national authorities and civil society organisations. ECRI also directs general policy recommendations to all Member States and promotes cooperation with relevant actors, in particular NGOs, mass media and youth associations.

In 2020, the Commission published reports of the fifth cycle of monitoring for Albania, Austria, Belgium, Czech Republic, Germany, Slovak Republic and Switzerland. Fur-

thermore, the Commission presented the conclusions on the priority recommendations to the following countries in the context of the fifth cycle reports already published: Andorra, Bosnia-Herzegovina, Denmark, Iceland, Luxembourg, Montenegro, Serbia, Sweden and Ukraine. No new General Recommendations were adopted.

The fifth cycle of monitoring for Italy began with the country visit from a Commission delegation in September 2015 (Report CRI(2019)24, adopted on 3 April and published on 6 June 2019). It ended with the ECRI's adoption of conclusions regarding the two previously identified priority recommendations: 1) ensure the full independence and autonomy of the UNAR and extend its competences and 2) provide students with the necessary information, protection and support to live in harmony with their sexual orientation and gender identity – adopted and published in 2019 (see *Yearbook* 2020, p. 282-283).

No significant ECRI actions concerning Italy took place in 2020.

VIII Advisory Committee on the Framework Convention for the Protection of National Minorities

The Committee is a monitoring body instituted pursuant to art. 26 of the Council of Europe Framework Convention for the Protection of National Minorities. It is composed of eighteen independent experts with recognised expertise in the field of the protection of national minorities. It is composed of eighteen independent experts with recognised expertise in the field of protection of national minorities who sit on the Committee in their individual capacity for a period of four years. In 2020, the Italian expert Emma Lantschner was a member of this committee.

The Advisory Committee serves to assist the CM in evaluating the implementation of the Framework-Convention in States Parties, through the examination of periodic State Reports. The results of this evaluation are expressed in a detailed opinion which serves as a basis for the preparation of the CM's conclusive resolutions on the Country in question. Follow-up meetings are generally organised by the Advisory Committee with a view to bringing together all actors – governmental and non-governmental – interested in the implementation of the Convention and to examine ways of implementing the results of the monitoring procedure. The CM concludes each cycle of monitoring of the Framework-Convention by adopting a resolution.

In 2020, within their respective evaluation rounds, the Advisory Committee on the Framework Convention conducted one visit in the Czech Republic and published its opinions on the situation of national minorities in Bulgaria, Cyprus, Denmark, Poland, Portugal and Hungary. It also held follow-up meetings with representatives and stakeholders from Lithuania and Portugal.

On 8 April 2019, the Italian Government presented the new report on the situation on national minorities in the country (ACFC/SR/V(2019)009), initiating the fifth monitoring cycle on the implementation of the ongoing Framework Convention (see *Yearbook* 2020, p. 284-286).

IX European Commission for Democracy through Law

The Commission, also known as the Venice Commission, is the Council of Europe's advisory body on constitutional issues; it was established in 1990 and receives financial support by a law of the Region of Veneto.

The Commission is composed of independent experts with extensive experience in the area of democratic institutions or excellence in the legal and political domains. Members are designated for four years by the participating countries which, as well as the 47 Member States of the CoE, include Algeria, Brazil, Chile, Israel, Kazakhstan, Kyrgyzstan, Mexico, Morocco, Peru, South Korea, Tunisia and the United States. Belarus is an associate member, while Argentina, Canada, the Holy See, Japan and Uruguay participate in the work of the Commission as observer countries. The European Union, South Africa, Palestinian National Authority, OSCE/ODIHR and the Organization of American States (OAS) have a special participation status.

Since 2009, Gianni Buquicchio has held the position of President of the Venice Commission. Two Italian experts participate in the Commission's activities as alternate members: Marta Cartabia and Cesare Pinelli.

Among its activities, the Commission puts forward studies and opinions on subjects covered by its competence, also at the request of other bodies such as the Parliamentary Assembly of the CoE and promotes in-depth seminars. In 2020, the Venice Commission adopted thirty-three opinions with regard to the adoption of laws or bills on matters of constitutional importance in the following countries: Albania (4), Armenia (2), Belarus, Bosnia-Herzegovina, Bulgaria, Georgia (2), Iceland, Kyrgyzstan (2), Kosovo (3), Latvia, Malta (2), Moldovan Republic (3), Montenegro, Poland, Russian Federation (3), Turkey, Ukraine (3), Uzbekistan. No opinions or documents were adopted concerning Italy in 2020. Among the numerous studies and reports undertaken by the Commission in 2020, the Interim Report on the measures taken in the EU member States as a result of the Covid-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights (CDL-AD(2020)018) is noteworthy.

X Group of experts on Action against Trafficking in Human Beings

The Group of Experts (GRETA) was established pursuant to art. 36 of the Council of Europe Convention on Action against Trafficking in Human Beings and is charged, together with a committee made up of the representatives in the CM of the States Parties to the Convention (Committee of the Parties), with monitoring the implementation of the obligations contained in the Convention.

The Group is made up of fifteen independent experts known for their recognised competence in the fields of human rights, assistance and protection of victims of trafficking in human beings or having professional experience in the areas covered by the Convention. On 9 November 2018, the Italian national Francesco Curcio was elected as the latest member of GRETA, who will stay in the role until 31 December 2022.

The monitoring procedure is divided into four-year rounds. The Group of Experts starts the dialogue with the Party under evaluation by sending out a questionnaire, which may be followed by requests for further information. If the Group of Experts deems it necessary, additional information may be requested from civil society organisations or gathered by organising a visit to the Country concerned. The draft report is sent to the relevant Government for comments. On receiving them, GRETA prepares its final report and conclusions and transmits it to the Country concerned and to the Committee of the Parties, which can adopt recommendations on the basis of the contents of the document. Each Party to the Convention appoints a contact person to cooperate with the Group of Experts.

In 2020, the Expert Group published the evaluation reports on the implementation status of the Convention in: Albania, Austria, Cyprus, Croatia, Czech Republic, Latvia, Moldovan Republic, Monaco, and the Slovak Republic. They conducted in-depth visits to the following countries: Kosovo, Malta, Montenegro, Romania and the United Kingdom.

No significant GRETA or Committee of the Parties actions concerning Italy took place in 2020. However, on 11 July 2020, the Italian Government's reply to the Committee of the Parties' recommendations (CP(2020)04 - see *Yearbook* 2020, p. 289-291) was received and published. This reply presents information on the steps taken nationally to combat human trafficking since April 2019 until the time of writing. It refers to measures within an institutional framework and relating to data collection initiatives, focusing on preventing human trafficking for the purpose of labour exploitation and the trafficking of children, on identifying victims, on access to compensation and on investigating perpetrators. The initiatives following on from the COVID-19 pandemic deserve a particular mention, especially the considerable efforts of the Department for Equal Opportunities to intensify its relations with actors of the national anti-trafficking system (local administrations and NGOs), to examine any issues arising from the containment measures of COVID-19 and to mitigate the impact on the protection of victims and emergency response activities. One of the developments presented in the reply was the meeting of the Control Room to prevent and combat human trafficking, convened by the Minister for Equal Opportunities, Elena Bonetti, on 2 March 2020. The Minister reaffirmed the committee of the Government to adopt the new National Action Plan against trafficking (2020-2022) by the end of 2020, re-established the technical committee and assisted in the approval to establish an ad hoc working group to strengthen collaborations among administrative institutions for data collection.

The start of the next GRETA monitoring cycle for Italy (the third) is scheduled for 2022, with the delivery of a questionnaire to the Italian authorities.

XI Group of States against Corruption

The Group of States against Corruption (GRECO) was established in 1999 in order to monitor the compliance of CoE Member States with the anti-corruption standards and rules of the Organisation. These benchmarks are contained in the legal instruments adopted by the Council of Europe on actions against

corruption – the Criminal Law Convention on Corruption with its Additional Protocol and the Civil Law Convention on Corruption – as well as the recommendations and resolutions adopted by the Committee of Ministers (in particular resolution (97)24 on the 20 Guiding Principles for the Fight against Corruption).

The Group is comprised of fifty States (forty-seven CoE Member States plus Belarus, Kazakhstan and the United States). GRECO's main objective is to improve the capacity of its members to fight corruption by monitoring their compliance with Council of Europe anti-corruption standards through a dynamic process of mutual evaluation and peer pressure. It helps to identify shortcomings in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms. GRECO also provides a platform for sharing best practices. The GRECO monitoring system takes place in periodic cycles and includes: a "horizontal" evaluation procedure involving all the members and ending with the elaboration of recommendations on the necessary reforms in the legislative and institutional field; and a "compliance" procedure whose purpose is to assess the measures taken by Member States to implement these recommendations.

Italy has been a member of GRECO since 30 June 2007 and has undergone four evaluation rounds to date. The first two rounds were dealt with jointly and concluded in 2013 with the adoption by the Group of States of an addendum to the compliance report (see *Yearbook 2014*, p. 253). In 2014, on the basis of information previously provided by the Italian Government, GRECO adopted the compliance report (Greco RC-III(2014)9E) on the measures adopted by the Italian authorities to implement the 16 recommendations received in the course of the third monitoring round regarding two themes: I) incrimination for corruption and II) transparency of party funding (see *Yearbook 2015*, p. 220). In 2016, GRECO adopted the second compliance report, relative to the third monitoring cycle and the evaluation report on Italy after the fourth evaluation round (GrecoEval4Rep(2016)2) (see *Yearbook 2017*, p. 226-228). In December 2018, GRECO adopted its fourth evaluation round compliance report regarding Italy (GrecoRC4(2018)13) focusing on corruption prevention in respect to members of parliament, judges and prosecutors (see *Yearbook 2019*, pp. 257-260). Furthermore, in December 2019, GRECO published the second addendum to its second compliance report evaluating the additional measures to implement the GRECO recommendations made during the third evaluation round of Italy adopted by the Italian Authorities since its first addendum in 2018. The recommendations concerned: I) Incriminations and II) Transparency of Party Funding (see *Yearbook 2020*, p. 292-293).

XII Group of Experts on action against Violence against Women and Domestic Violence

The Group of Experts (GREVIO) is the body responsible for monitoring the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) by the Parties which have ratified it.

GREVIO's main purpose is to draw up and publish reports evaluating legislative and other measures taken by the Parties to give effect to the provisions of the Convention. If necessary, in the event of serious and persistent acts of violence covered by the Con-

vention, GREVIO may initiate a special inquiry procedure. It can also adopt general recommendations on themes and concepts of the Convention. Other than electing the members of GREVIO, the Committee of the Parties completes the monitoring procedure of the Istanbul Convention, acting on the GREVIO reports and conclusions and adopting recommendations regarding the countries concerned.

GREVIO currently has fifteen members with multidisciplinary expertise in the area of human rights, gender equality, violence against women and domestic violence or in the assistance to and protection of victims. Among them is the Italian expert, Simona Lanzoni.

In 2020, after receiving the respective national reports and civil society contributions on the state of implementation of the Istanbul Convention, GREVIO published the first evaluation reports on the implementation of the Istanbul Convention in the following countries: Andorra, Belgium, Italia, Malta, the Netherlands, Serbia and Spain. It also conducted monitoring visits in Andorra, Malta, Poland, San Marino and Slovenia.

Although it was made public on 13 January 2020, GREVIO's Baseline Evaluation Report on Italy was adopted alongside the Government's comments on the report on 15 November 2019 and was analysed in the previous edition of the Yearbook (see *Yearbook 2020,* p. 294-299). During the visit, Paola Degani of the University of Padova carried out the role of national expert and was a member of the GREVIO delegation. Recalling the main observations in the aforementioned report, on 30 January 2020, the Committee of the Parties to the Istanbul Convention adopted a recommendation (IC-CP/Inf(2020)2), in which it reaffirms GREVIO's main recommendations, requesting that they be implemented by 30 January 2023. Among these main points, the Committee of the Parties recommended that the Italian authorities undertake the following actions:

- ensure an application of the legal provisions on the offence of ill-treatment in the family which is sensitive to the gendered nature of domestic violence against women and is not hampered by stereotyped views of women and their experience of violence;
- strengthen measures to prevent and combat violence which affects women who are or might be exposed to intersectional discrimination, ensuring that the provisions of the Convention are implemented with no discrimination;
- use the same level of commitment in relation to prevention, protection, investigation, punishment and provision of remedies for violence against women, in accordance with the due diligence standard enshrined in Art. 5 of the Istanbul Convention.
- pursue their efforts to a) devise and effectively implement policies of equality between women and men and the empowerment of women; b) consistently mainstream gender and gender-based violence in relevant policy areas; and c) systematically screen draft legislation and measures against their potential impact on gender relations and gender-based violence;
- pursue their efforts aimed at devising and implementing comprehensive and holistic policies to address violence against women in all its forms and manifestations, harmonising and monitoring the implementation at regional/local level of policies and measures to prevent and combat violence

against women, while continuing to conduct independent comparative analyses of the existing regional legislation and policies on violence against women and improving the coordination between national and regional/local government in the implementation of these policies;

- take further measures to ensure adequate funding levels for existing measures to prevent and combat violence against women, such as developing additional indicators of gender, compiling centralised data regarding funding by the different levels of territorial governance, developing appropriate long-term financing solutions for NGOs and women's specialist services, increasing the transparency and accountability in the use of public funds;
- reinforce the support and recognition of independent women's organisations and strengthen the national and local institutional framework for co-operating with these organisations during the design, monitoring, evaluation and implementation of measures and policies;
- provide a strong and adequate institutional basis for the bodies mandated to ensure the implementation and co-ordination of measures and policies to combat violence against women and pursue efforts to enable an effective monitoring and evaluation of policies, as well as human resources and dedicated funds, while pursuing efforts to enable an effective monitoring and evaluation of policies and improving the co-ordination between national and decentralised governmental structures;
- take the necessary measures to improve and expand the collection of disaggregated and harmonised data from all statutory agencies on all forms of violence against women, ensuring that the process of collecting data complies with international standards on personal data protection;
- develop further solutions offering a co-ordinated multiagency response to all forms of violence against women and to support their implementation by developing appropriate guidelines and training the staff concerned. Such solutions should be built on the strong involvement of local authorities and the participation of all the stakeholders concerned, including non-governmental organisations
- take the necessary measures to: a) expand the coverage and capacity of specialist services throughout the country in relation to all forms of violence against women, b) ensure the financial sustainability and the continuity of service provision, c) guarantee equal access to service provision for all victims throughout the national territory and d) harmonise the provision of such services with the human rights-based approach and the standards of the Istanbul Convention;
- ensure the availability of rape crisis and/or sexual violence referral centres which provide a sensitive response to sexual violence by trained and specialist staff and which uphold the principle of the victim's informed consent and control over decisions with respect to forensic/medical examinations, reporting, treatment, referral and the content of medical records;
- ensure wider levels of awareness among the professionals concerned of the harmful effects of witnessing domestic violence on children and guaranteeing access for child witnesses to appropriate support services;

- take all necessary measures, including legislative amendments, to permit that acts of violence against women receive an adequate response from law-enforcement agencies and the criminal justice sector;
- uphold their obligation to respect the principle of nonrefoulement of victims of gender-based violence, also ensuring that the human rights of victims rescued at sea at never put at risk because of disagreements about disembarkation.

XIII Lanzarote Committee

The Committee of the Parties to the Convention on the Protection of Children from Sexual Exploitation and Abuse (or "Lanzarote Committee", named after the city in which this legal instrument was adopted), is the body established by the Council of Europe in order to monitor the implementation of this Convention.

The Committee is composed by the representatives of the current and potential States party to the Convention and has the function of assessing the situation for children's protection against sexual violence at national level on the basis of information provided by national authorities in response to two periodic questionnaires (a general questionnaire and a thematic questionnaire) and in other sources. The Italian member of the Committee is Tiziana Zannini of the Department for Equal Opportunities of the Presidency of the Council of Ministers.

The Committee also collects, analyses, and exchanges information, experiences and best practices to increase its capability to prevent and combat sexual abuse and violence against children. In this context, the Committee organises capacity-building activities aimed at exchanging information and organises hearings on the specific challenges raised by implementing the Convention. Since 2017, data and information has been gathered for the second evaluation round for the implementation of the Convention; this round focuses on protecting children against exploitation and sexual abuse online and via communication technology. A thematic report will be presented using the responses to a questionnaire sent out to the authorities of all countries which have ratified the Convention (among which Italy) and with the input of civil society organisations and children's organisations.

No significant Committee actions concerning Italy took place in 2020. However, out of the documents adopted by the Bureau of the Lanzarote Committee in 2020, it is worth mentioning the opinion issue in response to the open call for comments on the forthcoming EU Strategy for a more effective fight against child sexual abuse (T-ES-BU(2020)03, 3 July 2020) and a statement, adopted on 3 April, on need to step up protection of children against sexual exploitation and abuse in times of the COVID-19 pandemic.

European Union*

I European Parliament

The European Parliament (EP), together with the Commission and the Council of the European Union, exercises a fundamental role in the promotion and protection of human rights within the overall framework of EU activities.

From 2019, the Italian Member of Parliament David Sassuoli has held the role of President of the Assembly. Among the permanent EP Committees prominent in human rights issues, the following are highlighted: the Subcommittee on Human Rights within the Committee on Foreign Affairs (Italian member: Andrea Cozzolino ; substitute Italian members: Susanna Ceccardi, Giuliano Pisapia, Silvia Sardone) and the Commission on Women's Rights and Gender Equality (Italian members: Isabella Adinolfi; Simona Baldassarre, Pina Picierno, Isabella Tovaglieri, March Zullo; substitute Italian member: Alessandra Moretti).

Other Committees with significant involvement in human rights issues are: the Committee on Civil Liberties, Justice and Home Affairs (Vice Chair: Pietro Bartalo; other Italian members: Caterina Chinnici, Laura Ferrara, Nicola Procaccini, Annalisa Tardino; substitute Italian members: Mara Bizzotto, Fulvio Martusciello, Sabrina Pignedoli, Giuliano Pisapia, Franco Roberti, Silvia Sardone); the Committee on Constitutional Affairs (Chair: Antonio Tajani; Vicepresidente: Giuliano Pisapia; other Italian members: Fabio Massimo Castaldo, Antonio Maria Rinaldi; substitute Italian members Brando Benifei); the Committee on Legal Affairs (Vice Chair: Raffaele Stancanelli other Italian members: Franco Roberti; substitute Italian members: Brando Benifei, Caterina Chinnici, Sabrina Pignedoli, Luisa Regimenti); the Committee on Employment and Social Affairs (Italian members: Elisabetta Gualmini, Elena Lizzi, Daniela Rondinelli, Stefania Zambelli; substitute Italian members: Simona Baldassarre, Brando Benifei, Mara Bizzotto, Chiara Gemma, Pierfrancesco Majoirino, Antonio Maria Rinaldi); the Committee on the Environment, Public Health and Food Safety (Italian members: Simona Baldassarre, Sergio Berlato, Simona Bonafé, Marco Dreosto, Eleonora Evi, Pietro Fiocchi, Fulvio Martusciello, Alessandra Moretti, Luisa Regimenti, Silvia Sardone; substitute Italian members: Carlo Calenda, Gianantonio Da Re, Salvatore De Meo, Danilo Oscar Lancini, Aldo Patriciello, Piernicola Pedicini, Daniela Rondinelli, Vincenzo Sofo, Annalisa Tardino, Lucia Vuolo); the Committee on Development (Italian members: Gianna Gancia, Pierfrancesco Majorino; substitute Italian members: Alessandra Basso, Valentino Grant, Patrizia Toia) and the Committee on Petitions which will be discussed further on.

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* Pietro de Perini

In 2020, the Sakharov Prize for Freedom of Thought was awarded to the democratic opposition in Belarus, for the bravery, resilience and determination shown when resisting the brutal repression from President Alexander Lukashenko's authoritarian regime during the protests in the aftermath of the election results of 9 August 2020.

Among the European Parliament's actions adopted in 2020 regarding both human rights issues and specific initiatives carried out by Italy or concerning the Italian situation, the following activities are reported: resolution of 10 July 2020 on Protection of the European Union's financial interests - combating fraud – annual report 2018 (P9_TA(2020)0192); resolution of 17 September 2020 on Arms export: implementation of Common Position2008/944/PESC (P9_TA(2020)0224); resolution of 17 December 2020 on the outcome of the Committee on Petitions' deliberations during 2019 (P9_TA(2020)0383); resolution of 13 February 2020 n child labour in mines in Madagascar (P9_TA(2020)0037); resolution of 14 May 2020 on discharge in respect of the implementation of the budget of the European Border and Coast Guard Agency for the financial year 2018 (P9_TA(2020)0117); resolution of 18 June 2020 on the Council position on Draft amending budget No 4/2020 of the European Union for the financial year 2020 accompanying the proposal to mobilise the European Union Solidarity Fund to provide assistance to Portugal, Spain, Italy and Austria (P9_TA(2020)0144); resolution of 14 May 2020 with observations forming an integral part of the decision on discharge in respect of the implementation of the budget of the European Asylum Support Office (EASO) for the financial year 2018 (P9_TA(2020)0083); resolution of 17 December 2020 on the implementation of the Dublin III Regulation (P9_TA(2020)0361); resolution of 18 December 2020 on the deteriorating situation of human rights in Egypt in particular the case of the activists of the Egyptian Initiative for Personal Rights (EIPR) (P9_TA(2020)0384).

Commission for petitions

The task of the Commission is to examine the petitions submitted by citizens (a right enshrined in the CFREU under art. 44, as well as articles 24 and 227 TFEU), and to endeavour to resolve any breaches of their rights under EU law. The Italian members of the Commission are: Eleonora Evi, Mario Furore, Gianna Gancia, Massimiliano Smeriglio, Stefania Zambelli; the substitute members are Mara Bizzotto, Rosa D'Amato and Pina Picierno.

According to the report on the deliberation results from the Commission for Petitions across 2019 (A9-0230/2020), presented on 23 November 2020 (Rapporteur: Kosma Złotowski), the number of petitions in 2019 concerning Italy dropped by 3.5%, from 147 in 2018 (9.4% of the total number of petitions received that year) to 103 (5.9%). Italian was the fourth most used language overall (after German, English and Spanish) to draft the petitions (123 in 2019, 9.1%). The number of petitions signed by an Italian national was 139 (10.2%), which has dropped by 4.3% from 2018.

No significant actions concerning Italy took place in 2020.

II European Commission

The European Commission plays a central role in the development and implementation of European Union policies on human rights both within the Union and in regard to third countries.

Of the twenty-seven members of the new Commission for the five-year period 2020-2024, particularly important are: Věra Jourová, Vice Chair, responsible for promoting values and transparency (related to upholding the rule of law, promoting democracy and monitoring the application of the Charter of Fundamental Rights), Dubravka Šuica, Vice Chair responsible for issues relating to democracy and demographics, Mariya Gabriel, Commissioner for Innovation, Research, Culture, Education and Youth, Nicolas Schmit, Commissioner for Jobs and Social Rights, Helena Dalli, Commissioner for Equality, Margaritis Schinas, Executive Vice Chair, responsible for promoting the European way of life (related to migration management, fighting hate speech and promoting interreligious dialogue); Frans Timmermans, Executive Vice Chair, responsible for implementing the new *Green Deal*.

The primary financial resources for the European Union activities on human rights is the European Instrument for Democracy and Human Rights (EIDHR), which supports the activity of the Global Campus of Human Rights.

On 2 December 2020, the Commission new Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, setting out the direction of the Charter implementation for the next ten years. The strategy focuses on four pillars for actions: effective application by the Member States; Empowering civil society, human rights defenders and other justice practitioners; the Charter as a compass for EU institutions; and strengthening people's awareness on the Charter among European citizens.

Within the framework of the newly established Rule of Law mechanism, the European Commission published its first annual monitoring report, with twenty-seven parts, one dedicated to each Member State. The report is divided into four parts: the Justice System, Anti-Corruption Framework, Media Pluralism, and Other Institutional Issues related to Checks and Balances. In view of the Agenda 2030, the outcomes of this evaluation mostly concern Goal 16 (Promote peaceful and inclusive societies), focusing on Targets 16.3, 16.5 and 16.10.

In the part of the report dedicated to Italy (SWD(2020) 311 final, 29 September 2020), with regard to the justice system, the Commission looked at its independence, quality and efficiency. Overall, the Commission considers Italy to have a solid legislative framework to safeguard judicial independence, including judges' and prosecutors' independence, although the perceived level of judicial independence in Italy is low. It highlights the reform proposed by the Government regarding the High Council for the Judiciary and other aspects of the justice system. Furthermore, the report discusses the new resources that have been allocated to hire magistrates and administrative staff and the reforms aiming at further increasing the digitalisation of the judicial system, even though the pre-existing digital solutions and legal framework allowed for some of the court activities to be maintained during the COVID-19 pandemic. Online access to judgments is also being improved and proximity offices have been established to enhance the courts' accessibility. The report also emphasises the introduction of new standards to improve the quality of

judicial decisions, set out through the cooperation between the judiciary and lawyers, with support from the Ministry of Justice. The justice system continues to experience serious challenges relating to the length of proceedings, and there are discussions on reforms to address these shortcomings in Parliament.

Concerning the second pillar of action, the report concludes that, in 2019, Italy continued to strengthen its legal and institutional anti-corruption framework, although the general perception remains that corruption is widespread across the country. Following previous efforts, the new anti-corruption law (l. 3/2019, so-called "bribe-destroyer law") has further tightened the sanction regime for corruption-related offences and suspended limitation periods after the first instance judgment. The use of investigative schemes and protocols deriving from the fight against organised crime has been extended to counter corruption offences. The National Anticorruption Authority has been strengthened as regards its preventive role to fight, maintaining its role of supervising and regulating of public contracts. A framework to protect whistle-blowers has been adopted. Italy has not yet adopted a comprehensive law regulating lobbying and the conflict-of-interest regime is fragmented. The capacity to detect, investigate and prosecute corruption is highly effective and benefits from the expertise of the law enforcement authorities in the fight against organised crime. However, the effectiveness of repressive measures is hampered by the excessive length of criminal proceedings (see above). A comprehensive reform to streamline criminal procedure is being discussed in Parliament.

On the third pillar of action, media pluralism, the report notes that the Italian Constitution enshrines freedom of expression and information as well as the principle of transparency of media ownership. The Italian regulatory authority for audio-visual media is deemed to be independent and effective. The political independence of the Italian media remains an issue due to the lack of effective provisions on preventing conflicts of interest in particular in the audio-visual media sector. Italy has established a Centre aiming at monitoring threats to reporters and developing the necessary protection measures to respond to concerns with regard to the safety of journalists. Prison sentences for defamation have been challenged in courts, drawing on the Constitution and the jurisprudence of the European Court of Human Rights on freedom of expression. The matter is currently pending before the Parliament.

As regards checks and balances, the Constitutional Court continues to have an important role, and has recently encouraged an increased participation of civil society and the general public to its proceedings. Regulatory impact assessments and stakeholders' consultations have improved but can be further developed. Reforms aiming at establishing a national human rights institution, which is still missing, are being debated in Parliament. There is a vibrant civil society, although some NGOs, particularly on certain issues such as migration, are subject to smear campaigns.

Further details on the Commission's action can be found in the section on EU Legislation in 2020 (see Part I, International Human Rights Law, III, B).

III Council of the European Union

Within the Council, there are the Human Rights Working Group (COHOM), the Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP), the Working Group "Asylum" and the Working Group "Public International Law"; within the latter, there is a training session dedicated to the International Criminal Court.

On 8 May 2020, the Council, alongside the European Parliament, adopted decision (7769/20) on the mobilisation of the European Union Solidarity Fund to provide assistance to Portugal, Spain, Italy and Austria following the extreme weather events in various regions in autumn 2019.

IV Court of Justice of the European Union

Following the entry into force of the Treaty of Lisbon, which made the Charter of Nice legally binding, the Court of Justice plays an ever more vital role for the promotion of human rights within the scope of EU law.

In 2020, Lucia Serena Rossi was a member of the court as a judge and Giovanni Pitruzzella as an advocate general.

According to the data provided by the CJEU, in 2020, Italy ranked third in the number of preliminary rulings (art. 267 TFEU) taken before the Court (44 out of 556), preceded by Germany (139 rulings) and Austria (50 rulings).

For a selection of the jurisprudence of the CJEU concerning Italy in 2020, see Part IV, Italy in the Case-law of the Court of Justice of the European Union.

V European External Action Service

The European External Action Service (EEAS) assists the High Representative of the Union for Foreign Affairs and Security Policy in upholding the CFSP/CSDP and ensuring the consistency of EU external actions in their functions both as President of the Foreign Affairs Council and as Vice-President of the Commission. The current High Representative is Josep Borrell (Spain).

There were no bills or specific EEAS initiatives regarding human rights and Italy in 2020.

VI Special Representative for Human Rights

Appointed by EU Council decision 2012/440/CFSP of 25 July 2012, the mandate of the European Union Special Representative for Human Rights involves enhancing dialogue with all relevant stakeholders concerning EU human rights policy, including international organisations, States and civil society organisations. The role of Special Representative is currently held by (Ireland).

No significant actions concerning Italy took place in 2020.

VII Fundamental Rights Agency (FRA)

An advisory body established in 2007, the FRA is the main technical instrument available to the EU with the task of supporting European and national institutions in the promotion and protection of human rights., Michael O'Flaherty (Ireland) has held the position of Director of the Agency since 16 December 2015. Since July 2015, Filippo di Robilant has sat on the FRA Management Board for Italy (Vice President as of 29 September 2017, as well as a member of the Agency's Executive Board). The substitute Italian member is Laura Guercio. Italian professor Francesco Palermo (former member of the Advisory Committee on the Framework Convention for the Protection of National Minorities) is part of the Scientific Committee.

The research element of FRA's work consists mainly of the gathering and comparative analysis of data concerning the fundamental rights situation in the various EU Member States, including Italy. The Agency can also adopt opinions on issues related to the protection of fundamental rights in the EU.

Among the many FRA activities of 2020, one of the most relevant for Italy is the publication of the bimonthly bulletin (six across the year) on the Coronavirus pandemic in the EU - Fundamental Rights Implications. In addition to outlining the general situation in Europe, every bulletin provides an individual country report for each Member State. These bulletins allowed for the monitoring the measures that the Italian Government have put in place over the past year to tackle the spread of the virus from a human rights perspective, focusing on their implication on social rights. The fifth bulletin was dedicated to the human rights situation of Roma and Traveller communities. Another relevant issue for the work of FRA concerned the situation of fundamental rights of migrants, refugees and asylum seekers in light of the pandemic, which was reported on in the quarterly bulletin published by the Agency. This contained various references to measures adopted by the Italian Government in 2020 on judicial and policy developments, the situation at the border, asylum process, reception, child protection, immigration detention, return, and hate speech and violent crime.

Italy was also mentioned in the report on "Strong and effective national human rights institutions – challenges, promising practices and opportunities", published on 1 September 2020, to help strengthen National Human Rights Institutions (NHRI) in countries where they are already present, and found NHRIs in countries which have not yet established one, in line with the Paris Principles. The report gives a comparative analysis of the situation in the twenty-seven EU member countries, as well as North Macedonia, Serbia, and the United Kingdom. It explores the various factors that influence the independence, effectiveness and impact of national human rights institutions and examines ways to tackle the challenges facing them. Moreover, it underscores the role of the NHRIs in the EU. It also indicates promising practices and the potential for greater engagement such as the role of the NHRIs in supporting monitoring of the rule of law and compliance with the EU Charter of Fundamental Rights.

In 2020, the FRA published the results of the survey "What do fundamental rights mean for people in the EU?". The FRA collected data from 32,537

people, 1,013 of whom Italian. There were very few data disaggregated within the report; however, among those discussed, it emerges that 57% of Italians interviewed agree with the phrase "Some people take unfair advantage of human rights". Furthermore, in Italy more young people than other age groups consider it important that opposition parties are free to criticise government, which was higher the European average.

VIII European Ombudsman

The European Ombudsman, an institution established in 1992 by the Treaty of Maastricht and provided for in articles 24 and 228 TFEU, examines the complaints lodged by European citizens about maladministration in the institutions and bodies of the European Union. The Ombudsperson is elected by the EP, and their duties are performed with complete independence. Emily O`Reilly, former National Ombudsperson of the Republic of Ireland, currently holds this position.

According to the report on the activities of the European Ombudsman concerning 2020, over the period considered, the Office processed 2107 complaints, of which seventy-eight were from Italy. It launched 394 investigations (of which nineteen for complaints from Italy), and overall concluded 394. In the same year, five investigations were initiated by the Ombudsperson on their own initiative.

IX European Data Protection Supervisor

Established by Regulation 45/2001, the European Data Protection Supervisor is responsible for ensuring the right to the protection of individual privacy in the handling of personal data by EU institutions and bodies, as specified in articles 7-8 of the Nice Charter. It is an independent body elected by the Parliament and the Council of the EU and the current Supervisor (as of 5 December 2019) is Wojciech Wiewiórowski (Poland).

On 3 December 2020, the European Data Protection Supervisor participated in the International Conference "5G Italy - and the Recovery Fund" organised by CNIT, with an intervention on the link between 5G technology and personal data protection.

Organization for Security and Cooperation in Europe (OSCE)*

Through a multi-dimensional approach to security, the OSCE (fifty-seven participating States) deals with conflict prevention, crisis management and post-conflict rehabilitation. Among its specific mechanisms and bodies are the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities, the Representative on Freedom of the Media and the Special Representative and Coordinator for Combating Trafficking in Human Beings. In December 2020, the mandate of Thomas Greminger (Switzerland) as Secretary General of the OSCE ended and the role was taken up by Helga Maria Schmid (Germany).

The Permanent Representative of Italy in 2020 to the OSCE is Amb. Alessandro Azzoni; since 4 January 2021, the role has been held by Amb. Stefano Baldi. Thirteen members of the Chamber of Deputies and the Senate sit in the OSCE Parliamentary Assembly, with its headquarters in Warsaw. Following the general election of 4 March 2018, the Head of the Parliamentary Delegation is Paolo Grimoldi. The other twelve Italian Members of Parliament are Luigi Augussori, Alex Bazzaro, Mauro Del Barba Gianluca Ferrara, Niccolò Invidia, Massimo Mallegni, Francesco Mollame, Emanuele Scagliusi, Paola Taverna, Achille Totaro, Valentino Valentini, Vito Vattuone. In 2016, the Italian Roberto Montella assumed the duties of Secretary General of the OSCE Parliamentary Assembly.

Italy is one of the major contributors to this organisation. In 2020, the Italian contribution to the budget was around €14.3 million (about 10.3% of the total budget), lower only to those of the United States of America (12.9%) and of Germany (10.9%). Italy also contributed to the extra budgetary expenses with a commitment of 570,000€, ranking 10th position. In 2020, Italy was in second place for the number of officials involved in the Secretariat, in OSCE institutions and in field missions (eighty-seven).

In 2020, the OSCE institutions organised a relatively limited number of initiatives and activities on the human rights situation in Italy which were developed around the work of the Representative on Freedom of the Media. From an Agenda 2030 for Sustainable Development perspective, the recommendations that were addressed to the Italian authorities aimed at improving access to information, diversity and independence of the media and protecting journalists from threats and violence. These contribute to the implementation of

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Goal 16 (peace, justice and strong institutions), particularly to targets 16.3 (promote the rule of law at the national and international levels and ensure equal access to justice for all) and 16.10 (ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements).

I Office for Democratic Institutions and Human Rights (ODIHR)

The ODIHR is the main institution of the OSCE which has been assisting Member States in the implementation of their commitments on the human dimension since 1991. On 3 December 2020, the Italian official Matteo Mecacci was elected the new Director of the Office, replacing Ingibjörg Sólrún Gísladóttir (Iceland).

No significant actions of ODIHR missions concerning Italy took place in 2020.

II High Commissioner on national minorities

The Office of the High Commissioner on National Minorities is the institution responsible for identifying, and as far as possible addressing, situations of inter-ethnic tension in the OSCE area. As well as serving as a conflict-preventing mechanism, the High Commissioner can also support quick solutions which can defuse processes of escalating violence. The ambassador Kairat Abdrakhmanov (Kazakhstan) was elected on 4 December 2020 the new High Commissioner. He succeeds Lamberto Zannier in the role, former Secretary-General of the OSCE from 2011 to 2017.

No significant actions of the High Commissioner missions concerning Italy took place in 2020.

III Representative on freedom of the media

Established in 1997 with a view to ensuring a high level of compliance with the rules and standards on freedom of expression and freedom of the media accepted by the States Parties to OSCE, the Representative on Freedom of the Media acts as an early warning instrument in cases of violation of the right to freedom of expression, with particular attention to any obstacles or impediments to the activities of journalists. On 4 December 2020, Teresa Ribeiro (Portugal) was appointed as the new OSCE Representative on Freedom of the Media, taking over from Harlem Désir (France).

In 2020, the OSCE Representative had to comment on the situation of freedom of the press in Italy, via declarations and comments through his official social media channels, as described in his periodic reports to the Permanent Council of the OSCE. Among those actions are: on 1 March 2020, the Representative condemned the threats made by a member of the Camorra mafia group against the editor of *Cronaca Flegrea* news outlet, Gennaro Del

Giudice, while he was reporting on a shooting in Naples. On that occasion, the OSCE Representative urged authorities to ensure the safety of the journalist, his family and his colleagues, and emphasised the need for the local authorities to also condemn the threats. On 18 March, the Representative publicly expressed his concern about the repeated death threats by neo-Nazi groups against the editor of the *La Repubblica* newspaper Carlo Verdelli; he praised the authorities for ensuring the safety of the journalist, who is now living under police protection, and urged that those responsible for the threats be brought to justice. On 25 March, the Representative expressed his concern about threats made and the mugging of a photographer working for the *La Stampa* newspaper while working in a marketplace in Turin on 24 March. He welcomed the inquiry launched by the General Investigations and Special Operations Division (DIGOS) law enforcement. On 21 April, the Representative condemned the arson attack on the home of the journalist Valentino Sucato, of the *Giornale di Sicilia* newspaper, and showed his appreciation for the fact that the authorities had launched an investigation. On 22 April, he condemned the arson attack on the car of journalist Fabio Buonofiglio, editor of the online *Altre Pagine* news-page in Corigliano-Rossano, noting the ongoing inquiries into the matter. On 4 May, the Representative condemned the shooting of journalist Mario De Michele, editor of the online news site *Campania Notizie*, at his home in Caserta, urging authorities to find those responsible.

IV Special Representative and Coordinator for Combating Trafficking in Human Beings

The Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings is responsible for assisting OSCE States to progressively meet their commitments in this area under the 2003 Action Plan. It also serves as the body co-coordinating all OSCE activities combating trafficking. Valiant Richey (United States of America) is the current OSCE Special Representative and Coordinator, in the role since 2019.

No significant actions of this office concerning Italy took place in 2020. In its annual report to the Permanent Council, the Special Representative highlighted his regret that the traditional annual simulation (held at the Center of Excellence for Stability Police Units of the Carabinieri in Vicenza) had to be rescheduled due to the COVID-19 pandemic. He thanked the Italian delegation for the seconded staff in the Office.

Humanitarian and criminal law*

I Adaptation to international humanitarian and criminal law

Italy is party to all the main international conventions concerning the law of armed conflicts and international criminal law. With the l. 4 December 2017, No. 200, Italy ratified and implemented (on 13 April 2018) an amendment to the Rome Statute establishing the International Criminal Court, adopted in 2015, concerning the elimination of art. 124 of the same Statute. The latter provision, better known as "opting out clause", provisionally provided that each State may declare that it does not accept, for a period of seven years from the entry into force of the Statute against it, the jurisdiction of the Court with respect to war crimes committed by their own citizens or on their territory. 2018 celebrated the 20th Anniversary of the Rome Statute, signed in 1998. 2018 was also the year that The Philippines deposited a notification of withdrawal from the International Criminal Court. The decision was communicated on 17 March 2019. The Philippines is the second State to withdraw from the Rome Statute (pursuant to art. 127) after Burundi in 2017.

Italy has not yet ratified the amendments to the Rome Statute adopted in 2010 during the Review Conference of Kampala (Uganda) and related to the statutory provisions on war crimes and crime of aggression.

On 6 December 2017, the Assembly of States Parties elected Rosario Salvatore Aitala as the Italian Judge of the International Criminal Court, whereas on 10 March 2018, Cuno Tarfusser (Italy) completed his mandate, which had started in March 2009.

In connection with the arms sector, the obligation to present periodic reports on the state of implementation of the provisions of the various conventions is particularly important. In this regard, in 2020, Italy presented its annual report required by the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons; the annual report required by art. 7 of the Convention against anti-personnel mines; the report requested by the Protocol on Mines, Booby-Traps and Other Devices and concerning the Protocol on Explosive Remnants of War, the annual report required by the Convention of Oslo on Cluster Munitions.

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* Ino Kehrer

On 7 July 2017, the Treaty on the Prohibition of Nuclear Weapons. It was opened for signature on 20 September 2017, as of December 2020, 87 States had signed and 51 had ratified it. The United Nations General Assembly convened a working group to develop the treaty: Italy voted against the resolution, and therefore did not participate in the drafting process and is not one of the States that has signed the Treaty.

II Italian Contribution to the "Peacekeeping" Missions and other International Missions

With the entry into force of the l. 21 July 2016, No. 145 regarding the participation of Italy in international missions, the procedures for authorisation and financing of the missions follow two distinct procedures: the procedure for the launch of new missions pursuant to art. 2 (resolution of the Council of Ministers, transmission to the Chambers, parliamentary authorisation by means of guidelines) and the procedure for the extension of the same for the following year, included in the so-called parliamentary session on the progress of the authorised missions (articles 3 and 4). art. 3 of the law also provides that, by 31 December of each year, the Government present to the Chambers, an analytical report on the missions in progress for discussion and subsequent parliamentary deliberations.

On 23 January 2020, the Council of Ministers discussed the analytic report concerning the international missions carried out in 2020 (Doc. XXVI, No. 3). This deliberation also aimed to authorise the continuation of these missions in 2020, pursuant to 3 of law 21 July 2016, and Italy's participation in five new international missions [1 January - 31 December 2020] (Doc. XXV, No. 3). The missions concern: European Union Military Operation in the Mediterranean - EUNAVFOR MED Irini in Europe; European Union Advisory Mission in support of Security Sector Reform in Iraq - EUAM in Iraq; Task Force TAKUBA combatting the terrorist threat in the Sahel region; Deployment of a national air and naval provision for presence, surveillance and security in the Gulf of Guinea and NATO Implementation of the Enhancement of the Framework for the South. Both of the Council of Ministers deliberations were approved by the Chamber of Deputies on 16 July 2020. Two missions were not extended in 2020: multilateral mission TIPH2 (Temporary International Presence) in Hebron (West Bank) and the NATO Support to Turkey - Active Fence provision, defencing the south-west border of the Alliance.

The resolutions of the Chamber of Deputies (31 March 2021) and of the Senate of the Republic (20 April 2021) authorised the European Delegation Law 2019-2020, They authorised the continuation of ongoing international missions and development cooperation initiatives supporting the peace and stability process in 2020, and to launch five new international missions.

The following list shows the military and police missions to which Italy participated with its own personnel in 2020. The total annual average number of armed forces' contingents used in the theatres operating in 2020 was 7,488 units for extended missions and 1,125 units for new missions. Based on the decree of the President of the Council of Ministers on the allocation of fund

resources (pursuant to art. 4, para. 1, of law 21 July 2016 No. 145, for the financing of international missions and development cooperation missions to support peace processes and stabilisation in 2020) (219), the Fund resources for international missions (pursuant to art. 4, para. 1 of law No. 145 of 2016 for missions from 1 January - 31 December 2020) was €l,185,611,680 for 2020 and €850,000,000 for 2021.

Country/geographical area of mission	**Mission**
Asia	Global Coalition Against Daesh
Afghanistan	NATO Resolute Support Mission (RSM)
Africa	United Nations Mission for the Referendum in Western Sahara-MINURSO
	European Union Training Mission Central African Republic-EUTM RCA
Albania	Bilateral Cooperation Mission of Italian Police Forces in Albania and Balkan countries
Bosnia-Herzegovina	European Union Mission ALTHEA
Cyprus	United Nations Peacekeeping Force in Cyprus (UNFICYP)
Egypt	Multinational Force and Observers in Egypt (MFO)
United Arab Emirates / Bahrain/ Qatar/Tampa, USA	Military personnel in the United Arab Emirates, Bahrain, Qatar and Tampa for needs connected to missions in the Middle East and Asia
Gulf of Guinea	Deployment of a national air and naval provision for presence, surveillance and security in the Gulf of Guinea
Kosovo/Balkans	European Union Rule of Law Mission in Kosovo (EULEX Kosovo)
	United Nations Mission in Kosovo (UNMIK)
	Joint Enterprise Operation (NATO)
India	United Nations Military Observer Group in India and Pakistan (UNMOGIP)
Iraq	NATO in Iraq
	Participation of military personnel in EU Advisory Mission in Support of Security Sector Reform in Iraq (EUAM Iraq)
Libya	United Nations Support Mission in Libya (UNSMIL)
	Bilateral Support and Assistance Mission for the Libyan military Coast Guard
	European Union Border Assistance Mission in Libya (EUBAM Libya)
Lebanon	Bilateral Training Mission for Libyan Armed Forces (MIBIL)
	United Nations Interim Force in Lebanon (UNIFIL)

continued

Mali	United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA)
	EUCAP Sahel Mali
	European Union Training Mission Mali (EUTM Mali)
Mediterranean	EUNAVFOR MED Operation SOPHIA (concluded 31 March 2020)
	European Union Military Operation in the Mediterranean - EUNAVFOR MED Irini
	NATO Sea Guardian in the Mediterranean Sea (formerly Active Endeavour)
	"Mare Sicuro": National naval air provisions in the Mediterranean Sea, which includes the bilateral mission supporting the Libyan Coast Guard
Niger	Bilateral support mission in the Republic of Niger
	EUCAP Sahel Niger
	Military personnel in multinational forces against the threat of terrorist action in the Sahel region (TAKUBA Task Force)
Palestine	Bilateral Training Mission for Palestinian Security Forces (MIADIT 9)
	European Union Police Mission for the Palestinian Territories (EUPOL COPPS)
	European Union Border Assistance Mission in Rafah (EUBAM Rafah)
Palestine/Egypt	EUNAVFOR Operation Atalanta
Somalia/Horn of Africa	European Union Training Mission Somalia (EUTM Somalia)
	EUCAP Somalia (former EUCAP Nestor)
	Bilateral training mission of the Somalian and Djibouti police forces
	Personnel based in the national military base in the Republic of Djibouti for needs connected with international missions in the Horn of Africa and surrounding areas
Tunisia	Bilateral cooperation mission in Tunisia
Strengthening national and NATO provisions	NATO: provisions for the defence of the South-East borders of the Alliance
	NATO: maritime surveillance of the southern borders of the Alliance
	NATO: provisions for forward presence in Latvia (Enhanced Forward Presence)
	NATO Air Policing for surveillance of the Alliance Air space
	NATO: participation of military personnel in the Implementation of the Enhancement of the Framework for the South initiative

PART IV – NATIONAL AND INTERNATIONAL CASE LAW

Human Rights in Italian Case Law*

The *Yearbook* saw a change in the research team, with this edition's group involving students from the master's course at the University of Padova. The group has conducted an analytical overview of the case law of the Italian courts in 2020 – aiming to identify both general trends and any specific judgments that have contributed to the human rights debate in Italy.

Every part of the Italian justice system was strongly affected by the emergency COVID-19 pandemic from management of cohabitation in prisons to organising hearings and other necessary administrative steps within the justice system. The emergency response to the pandemic is mentioned in some Constitutional Court judgments (followed by the decisions of the relevant courts on the merit and legitimacy of legislation that most affected fundamental human rights) in which the Court considered the consequences of the nation-wide shutdown of all justice activities that was imposed by the Governmental lockdown measures in spring 2020. The shutdown was followed by a still-ongoing phase of extensive remote working and systematically use video-conferencing software. The risk of infection was acutely felt within the prison system, bringing some prisons to levels of tension and in some cases actual riots. Moreover, it was quickly discovered that these riots were suppressed using completely unacceptable methods. The reaction of the legislator was to increase access to types of custody outside prison. This measure proved problematic in its application for a number of prisoners kept in enhanced detention regimes.

Beyond the pandemic and concerning one of the most interesting Constitutional Court judgments emitted in 2020, the issue of sentence enforcement has returned to the focus of legal policy considerations. The Constitutional Court, with judgment 32/2020, highlighted the importance of carefully considering the "human" consequences of political choices which for the last few years have systematically responded to unrest at a social, economic and institutional level. This makes the reaction on the criminal processing plan even more bitter, with it extending the "hard prison regime" to new categories of offenders. These measures betray a simplistic and old-fashioned vision of prison and punishment. The Constitutional Court recalled how the norms that exacerbate a sentence by generalising the use of prison custody (with no thought to possible reforms that would facilitate the reintegration

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of the offender) cannot be considered merely "procedural" and therefore the principle of non-retroactivity should apply. The judgment is an invitation to consider the concrete impacts of the "legal engineering" that the legislator often partakes in, which is to be positively welcomed.

I Aspects of the Relationship between the Italian Justice System and European Case Law

With some judgments (for example, Joint Sections, judgment 6 March 2020, No. 6460), the Court of Cassation opened a dialogue with the Constitutional Court and the CJEU on a question of significant importance: to what extent can the Court of Cassation, as the highest court in the Italian legal system, be called upon if a judgment of the Council of State applies the law contrary to EU law. The recent guidelines of the Constitutional Court aimed to limit challenges brought before the Court of Cassation of judgments of the Council of State to questions of dividing jurisdiction between ordinary justice and administrative justice (see Constitutional Court, judgment 6/2018; the same approach is required in relation to accounting justice in front of the Court of Auditors). However, the Joint Sections of the Court of Cassation observed that this way there is a risk of creating a difference between valid Italian judicial law supported by administrative court decisions and EU law. The Court of Cassation, while noting the conflict, is not permitted to provide any remedy, since it cannot be appealed. The problem arose with respect to judgments on public calls for tender, on which the direction taken by the Italian administrative court seemed to be contrary to EU law, a conflict which the Council of State has never resolved by referring the issue as a preliminary ruling to the CJEU. It is clear that it is not in Italy's interest to close the gap between Italian living law and EU law provisions, but the Court of Cassation finds itself with its "hands tied" due to the interpretation by the Constitutional Court of Art. 111(8) of the Constitution and its rigid separation of a court of law (ordinary justice) and a court of legitimate interest (administrative justice). With an interlocutory order, the Joint Sections of the Court of Cassation (ord. 18 September 2020, No. 19598) sent a request to the CJEU for a preliminary ruling to assess whether the current Italian legal framework (which allows the consolidation of a different interpretation of national law from that provided for by the EU Treaties) can be considered part compatible with EU law.

The Court of Cassation takes up and elaborates on ECtHR and CJEU case law to support the idea that principle of legal certainty, based on which, among other things, a law which is disadvantageous for citizens must be clear, precise and foreseeable, it is applied in a limited fashion within the field of tax law. This latter remains within the "core group" of State prerogatives. The case in question concerned the levy of additional fees for the concession to operate hydroelectric plants, as laid out in the 2012 stability law. The companies who were granted argued that the addition fees, as decided by national legislation, violated the reasonable expectation that the taxes on their conceded work would not be raised during the work itself. The Civil Cassation (Joint Sections, judgment 29 July 2020, No. 16261) held that this new fee did not violate the principle of due process of law as of art. 6 ECHR, confirmed by Art. 17 TDFUE and present in other EU law provisions. The contributor cannot expect taxation to stay the same across

the period of the concession, as long as the increases are reasonable and imposed while taking into account all the interests at stake. Even more so, the existence of an illegitimate interpretation does not create a legitimate legal expectation. The Court observed that, in addition, an interpretation of the unfavourable tax measure that was justified by a mere formality, or that was unclear or adopted "by surprise" would not be legitimate.

II Dignity of the Person, Right to Identity

A The Role of Legal Guardians and the Tutelary Judge

The Joint Sections of the Civil Cassation (judgment 24 January 2020, No. 1606) ruled on the disciplinary measure against a judge of the District Court in Palermo, accused of violating his duties of due diligence and vigilance in the exercise of his role of tutelary judge in a legal guardianship procedure. The legal guardian appointed by the judge had authorized various expenditures that were not consistent with the needs of the beneficiary (a woman with recurrent depression). These included the signing of an annuity for the woman's "carer". The Court of Cassation recalls that the law does not state that the tutelary judge must approve every report of the legal guardian (pursuant to articles 385 and 386 of the Civil Code) nor do the reports of the legal guardian have to be analytical in nature. At the same time, it is the duty of the tutelary judge to supervise the affairs of the beneficiary and assess whether the activity carries out with the help of their legal guardian corresponds to their needs or interests, not with mere bureaucratic interventions, but ensuring the effective protection of the person (see also Constitutional Court, judgment 144/2019, in *Yearbook 2020*, p. 328).

The explicit wishes of a person in instituting a legal guardian must be taken into consideration when the person in question has full capacity for self-determination, especially if this person has an organised and functional family network. In the case in question, an elderly lady (with some age-related problems but with full capacity for self-determination) expressed a clear refusal to nominate her daughter as her legal guardian. The Court of Cassation confirmed that the order to appoint the daughter, issued with no regard to the wishes of the elderly lady, must be revoked (Civil Cassation, sec. I, judgment 31 December 2020, No. 29981).

Concerning the naming of a legal guardian: to identify a competent territorial court, it is crucial to take the effective residence or domicile of a person into account, and not the permanent address found in the civil registry. Admitting a patient into a care home or hospice (given its temporary nature) does not entail a change in domicile address. In particular, the fact that an individual with a personality disorder is temporarily staying at a night shelter in the Province of Imperia but living (domiciled) in the Province of Savona is not a valid reason to change their domicile address (Civil Cassation, sec. VI, judgment 17 September 2020, No. 19431). On the relevance of the usual residence of the beneficiary, see also Civil Cassation, sec. VI, judgment 9 September 2020, No. 18682. In the case of a detainee, it is necessary to consider the place in which the person resided – either officially registered or effectively – before the start of their detention. Only when the person does not have any further relationships or interests concerning their previous residency (whether simply domiciled or legally residing) can the place of

detention be considered as their address (Civil Cassation, sec. VI, judgment 11 September 2020, No. 18943).

B Surrogate Motherhood: Right to Know One's Own Origins

In Italy, unlike other countries, the practice of surrogate motherhood is still prohibited and sanctioned by law. The Court of Criminal Cassation ruled on where the offence of applying to benefit from this type of surrogacy effectively took place. The case concerns an Italian couple who had made a deal with a Ukrainian clinic for a surrogate pregnancy (egg donation, heterologous fertilization and gestation by a person chosen by the clinic and birth in Ukraine). The procedure ended with the birth of twins who were registered in the Ukrainian city registry office with the Italian couple as their legal parents. The Italian Municipality of residence of the couple dismissed the subsequent request to transcribe this act in the Italian registry. Ruling on this issue, the Italian Court decided that, since the medically assisted reproduction (MAR) took place in Ukraine, the crime of surrogacy is not punishable in Italy art. 6 of the Criminal Code). In the appeal to the Court of Cassation, the prosecutor claims an erroneous application of law 40/2004, as in their opinion, illegal activity had started in Italy when an email request was sent to the Ukrainian surrogacy clinic. Before analysing the case, the Court of Criminal Cassation took an in-depth look into the scope of the sanction regulations on surrogate motherhood and gamete commercialisation (see *Yearbook 2015*, pp. 252-254, Constitutional Court judgment 162/2014). It also recalls the advisory opinion adopted on 10 April 2019 by the Grand Chamber of the ECtHR, which recognised the legality of State policies which wish to deter its nationals from going abroad to take advantage of methods of assisted reproduction that are prohibited on its own territory. In view of this, the Court of Cassation does not accept the argument that the offence took place in Italy. This highlighted the principle of legal certainty and reiterated that the verb "*realizzare*" (to realise or carry out) which is used to describe the offence in law includes all acts prior to the birth, but only those acts which are closely linked and functional to the reproduction. Therefore, the banned act was carried out entirely in Ukraine. The initial enquiry emails to the clinic have no consequence as they do not reach the criminal threshold of the offence and do not demonstrate a final decision to make use of the practice (Criminal Cassation sec. III, judgment 28 October 2020, No. 5198). Therefore, the Court of Criminal Cassation confirmed the conclusions of the District Court on the inadmissibility of the criminal offence.

The District Court of Rome (sec. I, judgment 11 February 2020, No. 3017) dismissed the challenge presented by the legal guardian of the children regarding the parental rights of the fathers of two girls, born by MAR and legally registered in the civil registry. The guardian questioned the biological link between the same-sex couple (both male) and their daughters, requesting that the link be assessed, and the couple be stripped of their legal status of parents. The guardian claimed that this correction was necessary to protect the best interest of the minors, their identity, and their right to know their origins. In the past, the couple had been absolved in their criminal proceedings for the offence of making us of heterologous fertilization with egg dona-

tion, having acted within the law in force of the country where the practice took place. In its dismissal, the Court established that one of the two men was the father of the two girls and that the birth certificate was accurate according to the national laws where the procedure was conducted. In addition, the case came in front of court after the five-year limit from the record of its recognition, established by the 2012/2013 reform on the issue. Furthermore, the extent to which the request is in the best interest of the children is disputable. Their status as daughters of the couple had been positively consolidated, as demonstrated by the reports from the social care services. To reiterate the vital importance of the best interests of the child, the Court cites, among others, Art. 3 of the CRC, Art. 4 of the CFR, Art. 8 of the ECHR, and the Constitutional Court decision No. 272/2017 (see *Yearbook 2018*, p. 267). This latter judgment concerning a case of surrogate pregnancy excluded as a matter of principle any automated ruling on questions which are inherent to children's rights. Finally, the District Court in Rome found that the legal guardian had not respected the girls' right to be heard with respect to the case (a right which must be respected even when, as in the case in question, the girls were less than 12 years old, which could call for the support of social care and welfare services). Regarding the right to know one's origins, the District Court ruled that this would be possible by allowing access to the information related to the egg donor and the gestational surrogate mother, with respect to the laws in force in the State where the MAR procedure was carried out. In this regard, the District Court pointed out that even Italian law does not recognise the unconditional right to know the name of the gamete donor.

The right of a mother to remain anonymous cannot be sacrificed or compromised for the duration of the mother's life, unless this reveals itself in the form of wanting to change her mind about surrogacy. The right to remain anonymous remains even after the death of the mother, however, this can be balanced by a need to safeguard other constitutional values, such as the protection of inheritance rights. The Court of Cassation recalls articles 2, 30 and 24 of the Constitution and art. 8 ECHR. In the present case, the mother who had asked to remain anonymous had subsequently allowed the child to stay in her home as a son, therefore, in practice, demonstrating her wish to waive her claims to anonymity. Consequently, there are no impediments to a posthumous assessment of maternity (Civil Cassation, sec. I, judgment 22 September 2020, No. 19824).

The Constitutional Court (judgment 127/2020 of 25 June 2020) was called in by the Turin Court of Appeal to judge on the constitutional legitimacy of art. 263 of the Civil Code, in that it does not exclude the situation in which a parent who has acknowledged a child as their own can subsequently (within a year) challenge the validity of this act if the act is lacking in truth. This regulation would contradict art. 2 of the Constitution, as it goes against the principle of responsibility that is attached to individual rights, and would violate art. 3 of the Constitution as it would introduce unequal treatment between those who knowingly recognise someone else's child as their own (who they can subsequently derecognise), and those who have given their consent to artificial insemination (who cannot, as it is expressly prohibited by art. 9 of l. 40/2004 on medically assisted insemination). The Court declared the issue to be ill-founded. In particular, it stated that in the event of the use of MAR, the prohibition to challenge the recognition of the child for lack of truth was linked to an exceptional situation aimed at protecting the stability of the legal

situation and personal identity of the child. The Constitutional Court reiterates the need for any Court judging on a question founded on Art. 263 of the Civil Code to assess the complexity of all interests at stake and the situation of all stakeholders involved on a case-by-case basis.

C Surrogate Maternity: Transcription of Foreign Documents; Adoption "in Specific Cases"

In 2019, the Joint Sections of the Court of Cassation tackle the issue of transcribing parental acts and documents in Italy of children born as a result of surrogacy (judgment 12193, see *Yearbook 2020*, p. 334), recognising that "pure" surrogacy (in which neither parent has a biological or genetic link with the child) is not compatible with Italian law and therefore that it is not possible to transcribe a child's parental data into the civil register in the same way as it appears on the foreign birth certificate (even if the birth certificate was issued in a country that allows legal surrogacy). In addition, the Constitutional Court (judgment 221/2019, see *Yearbook 2020*, p. 349) recognised that absolute parental rights do not exist, and therefore the limitation of access to MAR (in exceptional circumstances, also with donors) to heterosexual couples is not discriminatory with regard to same-sex couples, as the latter do not suffer from "pathological" condition of infertility, but rather "structural". In 2020, the Civil Cassation (sec. I, ord. 29 April 2020, No. 8325) raised the question of legitimacy of Italian law (particularly of Art. 12, para. 6 of law 19 February 2004, No. 40), as the public order in Italy does not allow the registration of a foreign court order (Canadian) in which the intended, non-biological parent has been inserted on the birth certificate of a child born through surrogacy. The Constitutional Court will rule in 2021, although with order 271/2020 of 18 December 2020, the Constitutional Court preliminary ruled on a procedural issue, excluding the surrogate mother (Canadian citizen) from legally taking part in proceedings. As the surrogate mother has not been inserted as a parent on either the Canadian or the Italian birth certificate, she has no legal stake in the outcome of the constitutional legitimacy procedure and therefore could not legitimately participate.

The Court of Civil Cassation, some local Courts, and the Constitutional Court ruled on the issue of transcribing foreign registry acts, in which both parties of a same-sex couple (two women) had been registered as the parents of the child, born to one member of the couple (resulting therefore in two mothers). The Court of Cassation (Civil Cassation, sec. I, judgment 3 April 2020, No. 7668), ruling on the application previously examined by the District Court in Treviso and of the Court of Appeal of Venice, concluded that law 40/2004, and in particular art. 5 of the same ("...couples—whether married or living together— of different sexes in which both persons are living, aged over 18 years and of potentially fertile age have access to MAR treatment") does not allow for the registration of the name of the "second mother" at the Italian Municipality civil registry office as the parent of the child born in Italy following artificial insemination carried out abroad. Therefore, in practice, a female same-sex couple can register the child (born following MAR treatment) by one of the two women as her child, but not as the child of both women. The registered woman's partner is still able to adopt the child, but the

adoption is not legitimising ("adoption in specific cases", regulated by art. 44 lett. d, of law 184/1983).

The Juvenile Court of Bologna ruled on a case of "adoption in specific cases" (judgment 25 June 2020). The law allows the partner within a same-sex couple to legally assume the role of parent of the other partner's child. In the present case, the Court recognises that the child has the right to be adopted by their non-biological mother and take their surname, given the de facto child/parent relationship between the two. The Court therefore confirms how law 76/2016 works in the recognition of the status of "family" to same-sex couples, opening them up (through non-legitimising adoption procedures) to become parents, to provide the child with a solid, secure and legally protected relationship. The judgment recalls the dynamic and evolving interpretation of the notion of family life by the ECtHR based on articles 8 ECHR (right to a private and family life) and 14 ECHR (prohibition of discrimination in access to rights, including those based on sexual orientation). the Court foresees no barriers in the application of these regulations regarding the request to add the non-biological mother's surname to the biological mother's, other than in cases of adoption of persons of adult age.

The case ruled by the District Court in Cagliari (sec. I, judgment 28 April 2020, No. 1146) is in partial contraction with the aforementioned decision of the Court of Cassation. The proceedings concerned the case of a child born in Germany after Medically Assisted Reproduction (MAR) treatment (also conducted in Germany) to a woman with the consent of her female partner. The civil registrar of the Municipality of Cagliari transcribed the birth certificate issued by Germany, registering both the biological mother and her partner as the child's parents. The Ministry of Interior and the Prefecture of Cagliari requested that the act be rectified and instead to identify the mother who gave birth and the biological father (donator) as the parents of the child. The Court was called to rule on the issue. It observed that within Italian law, parenthood is not exclusively based on a biological relationship: it includes natural procreation-based relationships, legitimate adoption-based relationships, and medically assisted reproduction-based relationships (law 40/2004). The first model is based on a biological, genetic link, the others on forms of emotional and social parenthood. A child born via MAR therefore has the status of the legal child of the couple who have expressed their willingness to utilize this technique (so-called intended parenthood). In Italian law, access to MAR is permitted to married or co-habiting "couples" (the term is not further defined). Therefore, a medically assisted reproduction-based relationship could also include same-sex couples. It is a well-established fact that in Italian law, the notion of couple includes same-sex relationships. However, it is also true that art. 5 of law 40/2004 does not allow access to MAR treatment for same-sex couples, although the priority is given over this law (like the ban of heterologous fertilization) to protecting the rights of the fetus and future child. To this regard, the Court cites art. 23 of EC Regulation 2201/2003; the European Convention on the Exercise of Children's Rights of 25 January 1996; and art. 24 of the CFR. The judge also recalled the Court of Cassation judgment 19599/2016 (see *Yearbook 2017*, p. 252), which established the right to recognition and transcription of a birth certificate (born through MAR treatment and legally issued by another EU State) into the Italian civil registry, even if heterologous fertilization was used as long as it did not involve

mother surrogacy (a practice which has been recognised as contrary to international public order) and it is in the best interest of the child.

The Constitutional Court ruled on the same issue in judgment 230/2020 (4 November 2020), confirming the interpretation of the Court of Cassation. The Constitutional Court declared inadmissible the question of constitutional legitimacy raised by the ordinary Court of Venice in reference to the refusal by the Municipal Civil registrar to insert the names of two mothers into the child's birth certificate, instead of one. The women in question had entered into a civil partnership and had made use of medically assisted reproduction procedures in a foreign State where the practice is permitted. The Constitutional Court was called upon to rule on the legitimacy of Art. 1, para. 20 of law 76/2016 (Regulation of civil unions between persons of the same sex and discipline of co-habitation– the so-called "Cirinnà law") and of art. 29, para. 2 of d.P.R. 3 November 2000, No. 396 (Civil Status Order), as amended by d.P.R. 30 January 2015, No. 26. According to the Court, the combination of these laws does not allow the partner of the mother who carried the child to be named on the birth certificate, even if they are in a civil partnership pursuant to the Cirinnà law. This would violate Articles 2 (lack of recognition of the right to intentional parenthood), 3 (unequal treatment based on sexual orientation), 30 (for not providing full protection of children and parentage), and 117(1) of the Constitution, in connection with Art. 24 CFR, Articles 8 and 14 ECHR, and Art. 2 CRC. According to this law, the marriage between parents no longer constitutes a legitimate differentiation in the relationship between parents and children. In considering this subject, the Constitutional Court reconstructed the legislative evolution of intentional parenthood and homogeneous parenthood. This acknowledges that Italian law recognises that single individuals, same-sex couples, and older heterosexual couples can all develop a family planning project in the primary interest of the minor. Moreover, recalling its own judgment 221/2019, the Court reiterates that according to current Italian law, which does not permit heterologous fertilization, same-sex couples are not legally allowed to access medically assisted reproduction treatment and that making use of MAR treatment abroad could potentially be contrary to the best interest of the minor. Despite the arguments in favour of the prevailing recognition of intended parenthood compared to biological parenthood in the case of medically assisted reproduction, the Constitutional Court did not regard an appropriate interpretation of Art. 5, l. 40/2004 which would take out any reference to the different sexes of the parents as possible. The prohibition of inserting "two mothers" as the parents of an individual is therefore confirmed, it is neither in violation of articles 2, 3, and 30 of the Constitution nor with art. 117(1) of the Constitution, as the ECtHR has on many occasions reiterated that Member States have a wide margin of appreciation on this issue (see the latest opinion released on 10 April 2019 on the request of the French Court of Cassation: Advisory opinion on the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, Request No. P16-2018-001). Therefore, only Parliament is able to regulate this issue in any other way. Awaiting this intervention, however, the interest of the minor to experience a regularised relationship with the second intended parent can occur in the form of (non-legitimising) adoption

in specific cases (so-called step-child adoption). Therefore, the right to parenthood for both women cannot be pursued through a Constitutional Court judgment, but it can be pursued via legislation. The question of constitutionality of the laws challenged is therefore declared inadmissible.

D Voluntary Interruption of Pregnancy

The Court of Civil Cassation (sec. III, judgment 10 June 2020, No. 11123) dismissed the application of one couple asking for compensation for a delayed diagnosis of the serious malformations of the foetus, and therefore for not being able to exercise the right to interrupt the pregnancy. The Court of Cassation rejects the application, underlining the crucial differences between the right to interrupt a pregnancy under law (art. 6, l. 194/1978) and the right to be prepared for managing any family, economic, or psychological issues that may arise from having a child with disabilities. In the case in hand, it was shown that the couple had not expressed their intention to interrupt the pregnancy and that this decision could be deduced by healthcare workers on the basis of other indicators (for example, the parents' socio-economic status) without an explicit expression of their wishes.

The Civil Cassation (sec. III, judgment 06 July 2020, No. 13881) ruled on the complaint presented by a gynaecologist (and the parallel case presented by an insurance company), ordering the granting of compensation to a woman who gave birth to a child with serious disabilities. The health authorities had neglected to inform the parents about the foetus' disfigurements and prevented the woman from choosing to interrupt the pregnancy. It was described as "compensation for damages caused by an unwanted birth", although according to the judge, this could be more accurately defined as "right to compensation for damages caused by a denial of the right to make a conscious choice on whether to have a therapeutic abortion". The compensation granted by the Court in favour of the woman took into account the cost of medical treatment and assistance that the person with disabilities needed, the general cost of maintaining a son for 25 years, and the psychological consequences for the mother after the child's birth. However, the compensation is long-term and must be paid across various years: this could come in the form of an allowance. It is not appropriate to order that the compensation be granted in one single payment, calculated by multiplying an annual sum by a pre-set number of years (in this case, 25 years), since this does not take into account the "enriching" effect that providing one lump-sum payment would have on the beneficiary.

The Criminal Cassation (sec. V, judgment 23 October 2020, No. 36862) confirmed the sentence of a doctor for the illegal interruption of six women's pregnancies and aggravated kidnapping (teleological link). The Court of Cassation held that there are two criminal offences within l. 194/1978 on the social protection of maternity and interruption of pregnancy, that is, the interruption of pregnancy without the woman's consent or with coerced consent (art. 18, now art. 593-*ter* of the Criminal Code) and the failure to comply with the methods foreseen for this practice (art. 19). The applicant had threatened and deceived his victims, going as far as locking two of them in a room to carry out the abortion, with no respect for the most basic forms of healthcare care safety.

E Conscientious Objection and Medical Treatment

The right to self-determination in health treatment and to religious liberty includes the choice of a Jehovah's Witness to refuse a blood transfusion, even in life-threatening situations and having given consent to various other treatments (although never transfusions). The applicant is a woman to whom it was essential to administer a blood transfusion due to an acute haemorrhage following a Caesarean section. The woman claimed that she had completely refused blood transfusions on various occasions, consciously and in full mental capacity. Furthermore, she stated that her decision was not only an exercise of her right to self-determination in medical treatment (art. 32 of the Constitution), but also a form of conscientious objection based on her religious faith (art. 19 of the Constitution). Therefore, the blood transfusion had not only compromised the integrity of her body, but also negated her religious values. The judge in this case found that the consent given for the laparotomy (a surgical procedure) established an implicit consensus for a blood transfusion. However, the Court of Cassation disagreed, accepting the reason for the appeal of the applicant and reiterating that a patient has the right to refuse any medical treatment, even life-saving cures. To be accepted, the disapproval must be explicitly expressed, unambiguous, and up to date. In life-threatening situations, a general expression of the patient's lack of consent is not sufficient: the patient's refusal to receive treatment must be expressed in full knowledge of the gravity of their health situation. In the Court's opinion, the constitutionally guaranteed principles of self-determination in health treatment and religious liberty had not been adequately applied in the case in question (Civil Cassation sec. III, 23 December 2020, No. 29469).

Another judgment concerns a Jehovah's witness: the victim of a car accident who died of his wounds having refused a blood transfusion. The Court of Appeal applied the theory of increased risk and/or risk exposure, establishing shared responsibility of the victim (presumably also on the basis of his refusal of a blood transfusion) and therefore reducing the amount of compensation owed by the person who caused the road incident. The Court of Cassation stated that on those grounds, the Court had ignored the constitutional right to refuse health treatments for religious reasons, enshrined in the right to self-determination in healthcare, the right to human dignity, and to personal identity. After consulting the case law on the issue of shared responsibility of the victim in road incidents, of criminal conduct, and of distinction between a causal relationship and natural contributing factors, the Court of Cassation accepted the application and nullified the decision under appeal (Civil Cassation, sec. III, judgment 15 January 2020, No. 515).

F Right to a Name

The right to a name is a fundamental right of every individual protected under the Italian Constitution. On the attribution of a surname to a child born outside wedlock (art. 262 of the Civil Code, para. 2 and 3), the mother requested that her own surname be replaced in the birth certificate with the father's surname (who had recognised the child but had not given him his surname). The mother claimed that keeping her surname would be damaging to the child, as it was associated with the woman's sister, whose partner was a well-known State-protected collaborator with justice in anti-mafia

prosecutions. The application was held in the first instance by the District Court in Barcellona Pozzo di Gotto, but was dismissed in the second instance by the Messina Court of Appeal, which stated that since the child's mother and her sister lived in different towns, it would not have been possible to negatively associate the child with the "informant" (the partner of the child's aunt). The mother contested the judgment and brought the application to the Court of Cassation. The Supreme Court highlights that on this issue, the Court must assess the best interest of the child within their social and family environments, on a case-by-case basis and consider the possibility of adding the name of the second parent, rather than disposing for a substitution (Civil Cassation sec. I, judgment 20 August 2020, No. 17429). For a similar ruling, see also District Court in Asti, sec. I, judgment 5 November 2020, No. 592.

The Regional Administrative Court of Florence (Tuscany Regional Administrative Court, Florence, Sec. II, judgment 20 June 2020, No. 778) dismissed the request of a young woman who, due to a breakdown in relations between her and her father, asked the prefecture to change her double-barrelled surname by taking off her father's surname, leaving just her mother's. The Regional Administrative Court reiterated the importance of protecting public interest in the certainty of a person's legal status and emphasised that the Prefect must be cautious when receiving an application to change a name or surname, which are exceptional by nature. In the case in hand, the Regional Administrative Court dismissed the application, noting that the stability of the individual's name had already been compromised a couple of years earlier, as the applicant had added her mother's surname to her own after their separation. The Court decided that keeping her father's surname would not have affected her development and may (with time) have helped improve her relationship with her father.

G Change of Name and Sex

The District Courts ruled unequivocally on the request of transsexual persons aiming to obtain authorisation to undergo surgical gender-reassignment treatment and to carry out the rectification of their birth certificate. In particular, the Courts received the application for rectification of civil registry entries based on the assessment of the individual's conscious and serious transition, without the need for reduction or modifying surgery on the person's primary sexual organs (Constitutional Court 221/2015, *Yearbook 2016*, p. 221). The judgments can be justified by examining the question of the scope of the inviable rights of the person (art. 2 of the Constitution), and particularly the right to fulfil one's own sexual identity, understood as one of the essential characteristics of the person, within the right to a gender identity, understood as the possibility of choosing one's own sexual identity regardless of their biological sex. See also: District Court in Milan, sec. I, judgments 11 February 2020, No. 1285; 17 February 2020, Nos. 1477 and 1479; 27 February 2020, No. 1888; District Court in Monza, sec. IV, judgment 4 February 2020, No. 254; District Court in Pavia, judgment 8 January 2020, n, 13; District Court in Termini Imerese, judgment 29 January 2020, No. 86; District Court in Milan, sec. I, judgment 17 February 2020, No. 1477; District Court in Civitavecchia, sec. I, judgment 25 June 2020, No. 540; District Court in Turin, sec. VII, judgment 21 September 2020, No. 3095) (see also *Yearbook 2018*, p. 265, *Yearbook 2017*, p. 255).

When choosing a new name, there is no obligation to substitute the person's original name with the male or female version of that name. The Civil Cassation (sec. I, judgment 17 February 2020, No. 3877) upheld the appeal of a person to whom the Turin Court of Appeal had imposed the female version of their original male name on the civil register.

H Prostitution and its Solicitation

Security guards and staff of public places – in this case, a cinema - are also active participants in the crime of habitual tolerance of prostitution (l. 75/1958, art. 3) even if they have no managerial powers (Criminal Cassation sec. III, judgment 13 November 2020, No. 3989).

The punishment for aiding and abetting, recruiting, inducing or exploiting prostitution is doubled if the offence was committed "at the expense" of an employee of the perpetrator of the crime (Art. 4, l. 75/1958). The owner of a massage parlour claimed to have caused no "expense" to an employee, the offended party, who would get a salary increase of around 800/1000 euros a month for sexual services offered to the parlour's clients. The Supreme Court clarified that "at the expense" does not refer to concrete damages or costs but must be understood as a synonym of "against" or "towards" the individual's own employees. The law refers to individuals in a state of mental handicap or infirmity, both natural or induced, to individuals in employment or domestic services, or towards several people, or drug addicts. The Supreme Court recalls the opinion of the Constitutional Court (No. 141/2019) (see *Yearbook 2020*, p. 326-327) which states that the aim of the law is to protect the dignity of the person and the inviolable rights laid out in art. 2 of the Constitution (Criminal Cassation sec. III, judgment 25 November 2020, No. 2918). Therefore, the possible earnings of the person practising prostitution are irrelevant.

The Court of Criminal Cassation (sec. III, judgment 16 December 2020, No. 9080) received an appeal from a man convicted by the Turin Court of Appeal for the crime of child prostitution (art. 600-*bis*, para. 2, Criminal Code). The man declared to have offered 3,000 euros to a seventeen-year-old girl to persuade her to accept a meeting in a hotel room for a photograph shoot. The Supreme Court found that the behaviour of anyone who, without manifesting their intentions (much less the intention of obtaining sexual services), attempts to be alone with a minor, by giving presents and monetary gifts, is not demonstrably an act that constitutes the crime of child prostitution, but is attributable to the crime of solicitation of minors (art. 609-*undecies* of the Criminal Code), which is applicable when the minor is under 16 years old.

The Supreme Court (sec. V, judgment 17 February 2020, No. 15662) reiterated that it is necessary to verify the state of subjection of the victim when considering the crime of reducing a person to slavery. This state can exist even when the person is not completely deprived of their liberty, but where the person's capacity for self-sufficiency had been significantly compromised. Therefore, the Court confirmed that the case of two Nigerian women and one underage girl constituted the crime of slavery. The three were denied their identification documents needed to stay in Italy and any earnings from prostitution activity and held without means of self-sustenance, with limited freedom of movement, and intimidated by violence and threats. The fact that the women were allowed a small margin of freedom is irrelevant when defining the state of subjection (see *Yearbook 2012*, p. 317).

The behaviour of an individual who, in any way and through any activity, facilitates the creation of the condition to practice of prostitution is covered by the crime of aiding and abetting child prostitution (art. 600-*bis*, para. 2 of the Criminal Code). The Court of Criminal Cassation identified the crime in the behaviour of a father who offered intimate contact with his three-year-old son to elderly passers-by in exchange for a few euros (Criminal Cassation sec. III,

judgment 23 October 2020, No. 3259). In a different judgment, the perpetrator facilitated prostitution by watching over a prostitute's son, allowing her to carry out her work inside the apartment. The judges excluded that this behaviour counted as parental support, given that the support was limited to the hours the woman was working and the perpetrator expected a cut of her earnings. The Supreme Court reiterated that the crime of aiding and abetting prostitution does not have to be habitual and focuses on the receipt of a share of the proceeds (although not necessarily financial) of the prostitution (Criminal Cassation, sec. III, sent 19 February 2020, No. 15948).

III Freedom of Religion, Rights to Freedom of Speech, Association and Political Rights; Right to Inform; Hate Crimes

A Religious Freedoms and Places of Worship

The Regional Administrative Court of Florence (sec. I, judgment 1 June 2020, No. 663) nullified provisions of the Municipal council of Pisa that amend the urban designation of an area that had been planned to be used to construct a place of worship, assigning it instead to become a car park and green public spaces. In the present case, the area had already been bought before the municipal deliberation was issued by an Islamic cultural association to build a mosque and a cultural centre. Since the association had already initiated all necessary building permit procedures, the deliberation at hand mainly affects the expectation of the association and its members to freely exercise their freedom of religious beliefs– a fundamental right that is explicitly protected by the Constitution (articles 8 and 19 of the Constitution). The fact that the deliberation foresees other areas to construct places of worship did not change the illegitimate nature of the measure. The challenged act, though not permanently undermining the right of the association to set up a place of worship, makes it extremely difficult to fulfil and does not take any responsibility for the problems caused.

The Regional Administrative Court of Milan (sec. II, judgment 10 August 2020, No. 1557) nullified the council resolution of the Municipality of Sesto Calende which dismissed the request of a Muslim association to find a location to build a mosque within the General Urban Development Plan of the Municipality. The fact that the Services Plan does not include an area designated for the construction of a place of worship is not a legitimate reason to not consider the application presented by the association. In light of guidance from the Constitutional Court– with judgments 63/2016 (see *Yearbook 2017*, p. 259) and 346/2002 – freedom of religion is also the right to be provided with adequate spaces to practice one's religion. From these principles comes a double duty of the public authorities (responsibility of the Government): as a positive obligation, relevant Administrations must envisage and allocate public spaces for religious activity; as a negative obligation, they must not place unjustified restrictions on the enjoyment of religious worship in private places and must not discriminate against any one belief system when ensuring access to public spaces.

B Anti-trade Union Actions and Discrimination

The Milan Court of Appeal (sec. labour, judgment 7 February 2020, No. 2121), dismissing the appeal presented by Esselunga S.p.A., confirmed that transferring two workers in the process of standing for election to become trade union representatives from a point-of-sales constitutes anti-trade union behaviour. Their transfer had blocked the two workers from participating in the elections of 24 November 2017, as they no longer counted as employees of that particular shop. On the same subject of anti-trade union behaviour, the District Court in Mantova (sec. labour, judgment 31 January 2020, No. 16) ruled that an employer's decision to suspend a worker (a trade union representative) from duty without pay for two days for an absence due to trade union responsibilities was illegitimate. The decision nullified the disciplinary penalty with the consequent obligation to reimburse the amount withheld by the employer.

The Court of Cassation (sec. labour, judgment 2 January 2020, No. 1) nullified the appeal judgment which, applying presumptive ordinary criteria, and charged the applicant trade union (SLAI Cobas) with the duty to provide evidence of discriminatory behaviour of a company which had ordered the transfer of 6% of the employees of a plant, 80% of whom were members of the applicant trade union. The Court found that articles 1 and 4 of lgs.d. 216/2003, when prohibiting discrimination based on "personal beliefs", this also refers to trade union beliefs and affiliations. Joining a trade union can reflect an individual's personal convictions, opinions, ideas and beliefs that the trade union itself (as a social and political body) can represent. Therefore, a different treatment based on the membership of a person in a trade union constitutes a prohibited discriminatory behaviour.

C Defamation through the Medium of the Press

With order 132/2020 (26 June 2020), the Constitutional Court referred the question of constitutional legitimacy to a hearing on 22 June 2021, brought up in relation to art. 595 of the Criminal Code and art. 13 of l. 47/1948 which sets out the provision that a journalist found guilty of defamation through the medium of the press can also be given a prison sentence and not merely a fine. The decision of the Court was justified in the spirit of sincere cooperation of institutions with the legislative branch. It should give Parliament enough time to approve a new legal framework on the issue, which is already being discussed in the Chamber of Deputies, which would be in line with the principles established within the Constitution and the Conventions (articles 3, 21, 25, 27 and 117.1 of the Constitution and art. 10 ECHR) which should exclude prison sentences for journalists in defence of their freedom of expression. The balance between freedom to express one's opinion and an individual's right to protect their reputation (well-established within the law on defamation through the medium of the press) cannot be fixed or immutable, as shown by the numerous ECtHR cases concerning Italy (see, for example, *Belpietro v. Italy*, No. 43612/10, 24 September 2013, see *Yearbook 2014*, p. 249; *Sallusti v. Italy*, No. 22350/13, 7 March 2019, see *Yearbook 2020*, p. 411).

Taking into account the judgment of the Constitutional Court, the Supreme Court (sec. V, judgment 9 July 2020, No. 26509) accepted the application and partially nullified the judgment of the Catanzaro Court of Appeal (15 March 2019) at the part foreseeing eight months imprisonment for a journalist found guilty of continued aggravated libel against four *carabinieri* officers, specifying however that a prison sentence should be given in particularly serious situations.

Concerning a defamation case, the Genoa Court of Appeal (sec. II, judgment 28 February 2020, No. 261) confirmed the inexistence of defamatory contents within the book *ZeroZeroZero*, in which the author, Roberto Saviano, reports on an operation to confiscate three and a half tonnes of hashish from aboard a luxury vessel. The applicant, a French citizen, the sole manager of a yacht hire company, claimed that Roberto Saviano had falsely indicated that he was piloting the boat when it was intercepted by the *Guardia di Finanza* corps. Instead, in that circumstance, one of the company's customers was operating the vessel. Since the book did not name any individual and spoke only (erroneously) of a French pilot, the book's contents were not deemed defamatory.

D Hate Speech

The Genoa Court of Appeal (sec. labour, judgment 25 June 2020, No. 122) rejects the complaint presented by an employee of the University of Genoa who was suspended without pay from responsibilities by his employer for 15 days after sending an email to a university mailing list with a message considered deeply offensive towards the Muslim population and their religious beliefs. In addition, the message sent by the complainant contained phrases inciting war against Muslims. In this case, the Court finds an abuse of the group's freedom of expression (art. 21 of the Constitution). This latter cannot be unconditional, as it is limited by the need to respect the rights of others. There is a clear violation of fundamental EU and constitutional principles that impose a ban on religious discrimination and rejection of war as a means of conflict resolution between peoples (articles 3 and 11 of the Constitution and art. 54 CFR).

According to the Court of Cassation (sec. V, judgment 18 November 2020, No. 307), the aggravating factor of racial hatred was correctly applied by the Court which convicted an individual for attacking a person with a car jack, while at the same time using racist and xenophobic slurs against them. The Court of Cassation confirmed that this aggravating factor does only exist when an action is intentionally directed at spreading hate and provoking in others the same feeling or at creating a clear risk of discriminatory behaviour; it can also exist when a person is clearly acting with an underlying prejudice of racial inferiority: the intention of the perpetrator is not relevant.

Freedom of speech and expression does not extend to hate speech or any discriminatory speech based on intolerance. The District Court in Rome (judgment 23 February 2020) established that Facebook acted legitimately in terminating its user agreements with those managing the various *Forza Nuova* Facebook pages. Moreover, the company had a duty to act in this way, given the clear references to fascist ideals that were repeated across numerous initiatives and public protests, which qualified *Forza Nuova* as a "hate group", that

is, an organisation of at least three individuals with a name, symbol or logo and whose primary purpose is to promote an ideology, declarations or physical actions against individuals based on race, religious beliefs, nationality, ethnic background, gender, sex, sexual orientation, serious illness or disability.

In a letter addressed to the company, a professional referred to an ENEL employee using the expression "homeless" (*clochard*), describing the worker's appearance and used clothes. The Court of Criminal Cassation (sec. V, judgment 14 October 2020, No. 33115) confirmed the existence of defamation through the medium of the press. The name used, while not in itself offensive, takes on a different meaning when used in a disparaging manner outside of its familiar context. For these reasons, the Court does not consider the defence of the right to criticise applicable. It consists of a manifestation of aporophobia, or the hatred or disgust towards poor or homeless people.

IV Asylum and International Protection

A Rescue and Assistance at Sea

Concerning immigration and rescues at sea, the Court of Cassation (sec. III, judgment 16 January 2020, No. 6626) intervened in the infamous affair of the German NGO Sea Watch 3 (see *Yearbook 2020*, p. 347). On 12 June 2019, the captain of the ship rescued fifty migrants in the Libyan Save and Rescue zone. On 29 June, the ship entered the port of Lampedusa to disembark, violating the express ban on entering Italian waters ordered by the then Minister of the Interior. The mooring of the ship followed after a delay in political solutions and after all appeals to the Lazio Regional Administrative Court and ECtHR had been unsuccessful. The choice was justified by the difficult and intolerable situation that developed on board the ship after 17 days of waiting for the authorisation to enter a port. On arrival, the Sea Watch 3 captain was arrested by the competent Italian authorities, but the preliminary investigation judge (GIP) would not validate the arrest, also dismissing the request for house arrest that had been filed against the captain. The Agrigento prosecutor appealed against this decision before the Court of Cassation, which subsequently dismissed the appeal. The Court of Cassation stated that the GIP had legitimately made her judgment, assessing that the justification of fulfilling a duty was plausible. Recalling that Italy has ratified and fully laid out the provisions of these instruments of international law in national law, the Court clarifies that the duty of rescue laid out in the International Convention on Maritime Search and Rescue is not limited to the act of saving a person in distress from drowning at sea, but also to deliver them to a "place of safety". To define this place of safety, the Court highlights some key passages from the Directive of the International Maritime Organization MSC 167-78/2004, which describes it as "a location where rescue operations are considered to terminate; where the safety of life of survivors is no longer threatened; their basic human needs (such as food, shelter, and medical needs) can be met; a place from which transportation arrangements can be made for the next or final destination"; furthermore, "even if the ship is capable

of safely accommodating the survivors and may serve as a temporary place of safety, it should be relieved of this responsibility as soon as alternative arrangements can be made". Consequently, the Court of Cassation acknowledged that the ship Sea Watch 3 could not be classified as a "place of safety", given that, in addition to being at the mercy of weather events, the ship did not allow the full respect of the fundamental rights of the rescued persons. Furthermore, rescued persons have the right to apply for international protection in accordance with the Geneva Convention of 1951, an operation which could not happen aboard Sea Watch 3. In confirmation of this interpretation by the Court, the Resolution of the Parliamentary Assembly of the Council of Europe No. 1821 (21 June 2011) is also cited, declaring that "the notion of 'place of safety' should not be restricted solely to the physical protection of people, but necessarily also entails respect for their fundamental rights" (see *Yearbook 2012*, p. 229 and 250). The Court of Cassation's ruling represents a balance between a State's duty to protect its borders on one hand, and the duty to protect the fundamental rights of vulnerable persons on the other and, in this specific case, prioritising the latter.

B The Ban on Civil Registration of Asylum Seekers

The ban on allowing asylum seekers with valid residence permits to register with a municipality, introduced by law-decree 113/2018 (so-called "security and immigration decree": see *Yearbook 2019, passim; Yearbook 2020,* p. 341-343), is regarded constitutionally illegitimate for the violation of art. 3 of the Constitution. With judgment 186/2020 of 31 July 2020, the Constitutional Court identified the irrationality and incoherence of measures on the stated aim of the decree to increase public security. In effect, not allowing an asylum seeker to register in the civil registry limits the public authority's capacity to check and monitor the resident population, by excluding a category of people who live in Italian territory. Another reason that provision was deemed unconstitutional was the unreasonable and unjustified unequal treatment of asylum seekers compared to other categories of foreign nationals living in Italy, as well as compared to Italian citizens. In fact, if the civil registry is a simple act that results from the objective and legal, usual residence in a place, whether the person is a citizen, foreign national, or a regularly settled asylum seeker is irrelevant.

C Questions of Constitutionality regarding l.d. 13/2017 (so-called *Minniti Decree*)

Following on from past questions of constitutionality raised (and dismissed) regarding l.d. 13/2017 (see *Yearbook 2019*, p. 305-306), the issue once again arises with judgment No. 22950 of 21 October 2020 of the Court of Cassation. With this judgment, the Court confirmed as manifestly ill-founded the questions of constitutional legitimacy of art. 35-*bis*, para. 13 of lgs.d. 25/2008 (as amended by the so-called Minniti decree), which established that the District Court's decision on the rejection act adopted by the Territorial Commission is not challengeable in front of the Court of Appeal. The provision does not outline any violation of art. 117 of the Constitution in connection with articles 6 and 13 ECHR, since the ECtHR did not require a second degree of judgment in all civil procedures as a necessary guarantee of a fair trial and an effective access

to justice. Even the EU Directive No. 2013/32, according to the interpretation of the CJEU (judgments C-175/17 and C-180/17), does not require Member States to grant the right to appeal to applicants who were unsuccessful at the first instance, since the principle of an effective remedy is limited to proceedings at first instance (see *Yearbook 2019*, p. 371).

With the text of art. 19-*bis* of l.d. 13/2017, amended by art. 2.4, of lgs.d. 220/2017, responsibility on applications filed by unaccompanied foreign minors was delegated to the specialised sections of the Court with a multi-judge panel. If a minor presented an application for international protection before the entry into force of the new law, the ordinary court (with a single-judge bench) must rule on the case, with the possibility of challenging the decision through appeal. In pursuance of the principle of *tempus regit actum* – according to which an action is regulated by the law in force in the moment of it taking place – and since the new regime would exclude any possibility of appeal, the Court of Cassation nullified the decree emitted by the specialised section of the District Court in Palermo and referred the case to the ordinary section (Civil Cassation, sec. I, ord. 27 February 2020, No. 5387).

The question of constitutionality arising from an inferred conflict between articles 3, 24, 97, 101, 108, and 111 of the Constitution was declared irrelevant. These are the articles that regulate the authorities who conduct the examination of applications for international protection (articles 2.1 and 3 of the d.p.r. 21/2015; art. 4 of lgs.d. 25/2008 and art. 3 of l.d. 13/2017, converted into l. 46/2017). The appeal brought up the unconstitutionality of the regulations on the grounds of lack of impartiality within the Territorial Commission which, during the administrative phase, had been assigned to make the decision on requests for international protection. The Commission consisted of four members, one from each prefecture, the State Police Force and the regional authority, and the final member delegated from the UNHCR. By law, for a positive decision from the Commission, at least three out of the four votes in favour are necessary. The applicants claimed that this system within the Commission would cause a conflict of interest, since the majority of its members were part of the judiciary system. The Court of Cassation (sec. I, judgment 6 October 2020, No. 21442) held that the issue was irrelevant given that in the event of appeals against a decision with which the Territorial Commission recognises or denies protection, the jurisdiction of the ordinary court is complete and not limited to assessing procedural regularity. The Court's decision concerned all judicial circumstances linked to whether or not the foreign national has a right to international protection, ensuring a fair hearing and impartiality of the judge (see also Civil Cassation sec. VI, judgment 29 September 2020, No. 20492).

D Recognising International Protection: Procedural Issues

If a video recording of the interview between an asylum seeker and the Territorial Commission is missing, the judge is obliged to schedule a hearing. As ruled by the CJEU (C-348/16 of 26 July 2017), the need to schedule a hearing does not lead to the need to examine the asylum seeker, as long as they are guaranteed the opportunity to make their own statement before the Territorial Commission or, if necessary, before the District Court (Civil Cassation, sec. III, judgment 6 May 2020, No. 8574; judgments sec. II, 17 July 2020,

No. 15318; 3 November 2020, No. 24444) (see *Yearbook 2018*, p. 324-325). With a series of judgments, the Court of Cassation specified the cases in which it is necessary to proceed (in addition to scheduling a hearing) with an examination of the applicant. The judge is compelled to listen to the applicant when it is clear from the appeal that new facts supporting the application have arisen, when further clarifications concerning inconsistencies and contradictions in the statement are needed, when the asylum seeker makes the appeal specifying the elements that they want to clarify and presenting admissible and justified requests for a hearing, or when the hearing was omitted or conducted inadequately during the administrative phase (Civil Cassation, sec. labour, judgment 22 December 2020, No. 29304; sec. I, judgments 14 May 2020, No. 8931; 7 October 2020, No. 21584; 11 November 2020, No. 25439). Another similar scenario is when the applicant is a minor at least 12 years old– or younger, if the minor is capable of discernment – under the principle expressed in art. 12 of the CRC. Minors have the right to be heard in these situations, although this can be omitted only if, taking into consideration the maturity of the applicant, there are specific reasons that discourage it (Civil Cassation, sec. I, judgment 27 January 2020, No. 1785).

According to art. 10, para. 4 of lgs.d. 25/2008, "all communications regarding procedures for international protection must be provided to the applicant in their first language or, if this is not possible, in English, French, Spanish or Arabic, as chosen by the applicant. In all phases of presenting and examining the application, the applicant is guaranteed, where necessary, the help of an interpreter of their language, or a language they understand. Where necessary, a translation of all documents produced by the applicant should be provided at all stages of the proceedings." If an asylum seeker complains of a missing translation of their rejection communication in their own language or a language known to them, when appealing the decision, the person cannot complain of a general violation of the State's duty. Rather, the applicant must specify the way in which that measure harmed their enjoyment of the right of defence (Civil Cassation, sec. I, judgments 3 July 2020, No. 13769; 23 November 2020, No. 26576; 30 November 2020, No. 27254).

Committing a serious crime (including murder) excludes a person from refugee status or other forms of international protection. It is the duty of the judge to rule on each individual case on whether the assessment of criminal responsibility of seekers of humanitarian protection was conducted by a qualified judicial body and does not constitute a groundless statement, possibly based on prejudice. In the case at hand, the asylum seeker had declared to have escaped from Guinea after having killed a man who was part of a group that attempted to raid his herd while driving them to pasture. A declaration made by a police officer of the African State described the individual as the perpetrator of the murder, but no judicial decision was produced to prove this. Furthermore, the fact that Guinea has abolished the death sentence is not an adequate reason to exclude the illegitimacy of an individual's deportation to that country, since the Italian authorities had not independently verified the existence of a serious risk of inhuman treatment or torture. The rejecting judgment is therefore repealed, and the new college must decide after examining the facts of the case (Civil Cassation, sec. labour, judgment 23 November 2020, No. 26604).

E Humanitarian Protection, before and after the 2018 "Security Decree"

Based on Italian law up to the adoption of the l.d. 113/2018 ("security decree"), the State issued international protection seekers with a residence permit for humanitarian reasons for those who found themselves in a vulnerable situation and on serious humanitarian grounds (see *Yearbook 2019,* pp. 199 and 306-307; *Yearbook 2020,* p. 341). Many decisions emitted in 2020 apply the preceding legislation, since they concern international protection applications filed before October 2018 and the introduction of the "security decree". The actual extent of norms introduced by l.d. 113/2018 (which had removed the residence permit for humanitarian reasons from Italian legislation) was limited by the adoption of l.d. 21 October 2020, No. 130 (converted with law 18 December 2020, No. 173) which reintroduced this type of protection (art. 5(6), last phrase, of lgs.d. 286/1998 – Consolidated Law on Immigration).

Health- or age-based reasons, famine or environmental disasters, the absence of family ties in State of origin, being the victim of serious political instability, violence or insufficient respect for human rights are all eligible conditions for recognition of so-called "humanitarian protection". Humanitarian protection cannot be granted on the basis of a generic reference to the socio-political situation of the applicant's country of origin, but must be related to the specific situation of the individual applicant (Civil Cassation, sec. I, judgment 27 March 2020, No. 7542; sec. III, judgment 2 November 2020, No. 24249; Cagliari Court of Appeal, judgment 2 October 2020, No. 488; Rome Court of Appeal, judgment 10 November 2020, No. 5552). Neither leaving a country of origin due to a general state of poverty nor the existence of problems due to insufficient wages to support the whole family justify, with no additional motivation, the granting of a residence permit for humanitarian reasons (Civil Cassation, sec. I, judgments 19 May 2020, No. 9158; 24 July 2020, No. 15938; sec. III, judgment 6 November 2020, No. 24904). It is the duty of the judge to ascertain whether a "general state of poverty" has reached the levels of famine – a criterion that would constitute humanitarian reasons. It established that the Ministry of Foreign Affairs website "*viaggiaresicuri.it*" does not have to be the only source of usable information in support of the asylum application (Civil Cassation, judgments sec. III, 12 May 2020, No. 8819; 25 September 2020, No. 20334). Once again, in reference to the law in force before l.d. 113/2018, pregnancy is included as a situation of vulnerability that could justify humanitarian protection (Civil Cassation, sec. I, judgment 13 October 2020, No. 22052), as is a foreign national who will soon father a child with an Italian partner (Civil Cassation, sec. I, judgment 25 September 2020, No. 20291). To protect the best interests of the child, and not of the applicant, the Supreme Court tends to recognise residence permits for humanitarian reasons for single parents with under-age children within the Italian territory (lgs.d. 25/2008, art. 2, lett. h-*bis*; Civil Cassation, sec. II, judgments 16 September 2020, No. 19253; 20 October 2020, No. 22832). It is important to stress the single-parent aspect of the family unit. The Court of Cassation clarified that, in order, the fact of having a legally residing child in Italy is not a sufficient criterion to recognise humanitarian protection if the other parent is also present (Civil Cassation, sec. VI, judgment 25 May 2020, No. 9554).

The Supreme Court (sec. I, judgment 28 October 2020, No. 23720) reiterated a point that has been extensively clarified in previous judgments (see, for example, *Yearbook 2014*, p. 295; *Yearbook 2016,* p. 235; *Yearbook 2019,* p. 285); that the right to private and family life pursuant to art. 8 ECHR of a foreign citizen residing in Italy, specifically the right to maintain personal and family relationships, can justify an opposition to re-

patriation measures. The Court of Cassation shares the decision of the District Court in Bologna to issue a residence permit for serious humanitarian reasons to a foreign national with no social, cultural or affectionate ties to his country of origin and whose mother legally resides in Italy. As the Court must protect the right to family life, it is important that the judge considers (as a constitutive factor) any possible situation of vulnerability, bearing in mind the family ties of the applicant within Italy. It is necessary to weigh up the risk of damage to family life and the need for public security and controlled migration. Therefore, the Court confirmed the serious humanitarian reasons that the District Court identified and reported in an effective and overwhelming disproportion in the enjoyment of the fundamental right to a private and family life between the two life contexts.

Italian law on international protection (lgs.d. 251/2007 and successive reforms) prohibits the repatriation of an individual to a State in which the person may suffer inhumane or degrading treatment (Civil Cassation, sec. I, judgment 17 February 2020, No. 3875). Within this definition can be included a fear of revenge or retaliation by a group of family members who feel that their honour has been offended by a relationship with another member of the family, as it detrimental to fundamental rights, in particular under articles 2, 3 and 29 of the Constitution and of art. 8 of the ECHR. For these reasons, the Court of Cassation refers the judgment on recognising international protection to a Pakistani citizen to the Court of Appeal. The case concerns a man who fled the country for fear of revenge from the family of a woman with whom he was having a secret relationship. These fears were heightened by the "honour killing" of his girlfriend and repeated threats made by the woman's brother (Civil Cassation, sec. I, judgment 22 January 2020, No. 1343) (see also *Yearbook 2018,* p. 285).

Concerning the effects of the removal of humanitarian protection introduced by l.d. 113/2018, the Italian Court stressed the non-retroactive effect of this repeal (Regional Administrative Court of Brescia, sec. II, judgment 11 June 2020, No. 443) as defined by 2019 case law (see *Yearbook 2020,* p. 345). The Council of State (sec. III, judgment 8 May 2020, No. 2912) further added that anyone who already possessed a residence permit for humanitarian reasons issued before the new law came into force (on 5 October 2018), art. 1.8 of the decree would be able to renew their residence permit, transforming it into one of the new forms of "special protection". Therefore, it is possible to request the conversion of a residence permit into a residence permit for employment both at the same time and after the renewal of that permit, if you are in possession of all necessary criteria. Therefore, the Council of State nullified the decision of the Bergamo Police Headquarters (*Questura*) which dismissed a request to change a residence permit into a residence permit for employment after the Territorial Commission had rejected an application for international protection.

The right to reception within the SPRAR/SIPROIMI system cannot be negated on the basis of security decrees if an application to recognise humanitarian protection was filed before the entry into force of the new law (Regional Administrative Court of Lecce, sec. II, judgment 29 June 2020, No. 678).

F The Improper Use of the Term "clandestine"

The Milan Court of Appeal (judgment 6 February 2020, No. 418) fully confirmed the order emitted by the District Court which found that some political manifestos containing the phrase "illegal immigrants" (in allusion to asylum seekers) were discriminatory. The case concerned the actions of a local

"Northern League" party group, who, in April 2016, put up around seventy posters in the small city of Saronno, protesting the decision of the Prefecture of Varese to create a structure to house thirty-two asylum seekers. The posters bore the party's logo and the slogans: "Saronno doesn't want illegal immigrants"; "Renzi and Alfano want to send 32 illegal immigrants to Saronno: bed, board and vices paid by us. Meanwhile, they are cutting pensions and raising taxes for the Saronnesi"; and "Renzi and Alfano, complicit in the invasion". In the opinion of the Court of Appeal, these expressions violated the dignity of those seeking protection and created a hostile, humiliating and offensive environment around them aiming at their exclusion for reasons of race, ethnic origins and nationality. The freedom to express a political opinion must be balanced with respect and dignity of the persons to whom it refers. Furthermore, since these are individuals exercising fundamental rights that are recognised under art. 10 of the Constitution, the use of the expression "illegal immigrants" (which implies the illegal entry into a country) is profoundly inadmissible. The fact that the word in question is occasionally used within Italian legislation (art. 12 of the Consolidated Text on Immigration) does not legitimise its use in this context (see *Yearbook 2020*, p. 348-349).

G Age Assessments for Unaccompanied Foreign Minors

The Civil Cassation (sec. I, judgment 3 March 2020, No. 5936) ruled for the first time on verifying the age of unaccompanied foreign minors. The Court held that declarations made by the individuals to the authorities cannot be used to demonstrate the real age of the minor but constitute a premise to initiate proceedings in the absence of an official document proving date of birth. During the proceedings, the Juvenile Court must also use an age assessment (medical examination) which may show the range of age (with a margin of error) and consequently the maximum and minimum age of the minor. If this age range does not conclusively determine their age, the rule of presumption of minority is applied. Implementing this principle, the Civil Cassation nullified a Court of Appeal decree which, regarding the applicant's declarations that he was under 18 years old as unreliable, had arranged a medical examination based on bone growth and dismissed the appeal without taking the margin of error indicated within the assessment itself. The report used criteria that would be suitable for people born in the Mediterranean area, which were not suitable to determine the age of someone from Western Africa (Gambia). Therefore, this unresolved doubt should have led the authorities to presume that the individual was a minor.

A judge that dismissed an application for humanitarian protection did not correctly apply the law, as its dismissal exposed the applicant to a situation that would violate art. 3 ECHR (prohibition of inhuman and degrading treatment). The judge stated that the applicant had made no progress in integrating into Italian society without considering the status of the irregular migrant as an unaccompanied foreign minor at the time of application and the ongoing absence of family members in Italy. The Court's judgment will be referred for further assessment, which will take into account the vulnerability condition that the applicant has experienced in the past and continues to endure (Civil Cassation, sec. I, judgment 17 June 2020, No. 11743).

V Discrimination – General Issues

A Discrimination based on Nationality or Ethnic Origin

Among the decisions taken to tackle the emergency COVID-19 pandemic and its consequent economic effects, order 658/2020 of the Civil Protection Department delineated funds for urgent measures to provide food solidarity packages. As laid out in the order, the resources were allocated in proportion to the resident population of each Municipality and the duty to identify the individuals who would benefit from the support was given to the social services offices. The only criteria specified for receiving this support was a person's economic condition and their state of need. The Municipal Council that, in its criteria for distributing food vouchers, listed "residency in the Municipal territory" as a prerequisite was found to have acted in discrimination of those without fixed housing in the Municipality, or simply those who live in the area who have not recorded their address in the civil registry. This discrimination could cause serious harm to an individual, as it constitutes a deprivation of their primary food need. The Nola District Court (ord. 14 May 2020, No. 6892) ordered the Municipality to remove the discriminatory clause and rewrite the criteria to receive this help and the ways to distribute it (see also Abruzzo Regional Administrative Court, sec. I, judgment 11 May 2020; District Court in Rome, ord. 1 June 2020). A case in which a Municipality required non-EU citizens to show a long-term residence permit to receive food vouchers was similarly deemed discriminatory (District Court in Brescia, decree 28 April 2020; District Court in Ferrara, ord. 30 April 2020).

In 2015, two Municipalities in the Province of Savona adopted two orders prohibiting homeless persons from African, Asian and South American countries to stay, even occasionally, within the Municipal territory. The measures only allowed persons with a health certificate attesting that they did not have various infectious diseases (such as scabies, HIV, tuberculosis and Ebola) to stay in the Municipality. The Genoa Court of Appeal (sec. III, judgment 26 August 2020, No. 806) confirmed the District Court's decision which had ruled that the adoption of this order was paramount to a discriminatory act and dismissed the administration's appeals. The measures taken were not justified by any health-based reason; the aim was clearly to discriminate against those persons on the basis of nationality. There is no reason that indicating macro-regions instead of individual nations would have any effect in avoiding the spread of disease.

To open a basic bank account, it is sufficient for international protection seekers to show the receipt from formally filing their aid application. The *Poste Italiane* offices that refused to open a current account for a Colombian asylum seeker were found to have committed a discriminatory act based on the man's ethnicity and nationality, in addition to disregarding the law on the right to a basic bank account (art. 126-*noviesdecies* of the Banking Act, lgs.d. 385/1993). Considering that there is a legal obligation to pay wages into a bank account and that an employer paying the asylum seekers in cash is punishable by an administrative fine from €1,000 to €5,000 (l.d. 113/2018), the Post Office's refusal could constitute a barrier to accessing the job market, social welfare

and any support provided by the Italian State during the emergency COVID-19 pandemic (District Court in Rome, ord. 21 December 2020, No. 64733).

The Constitutional Court (judgment 44/2020 of 9 March 2020) received the question raised by the District Court in Milan and declared art. 22.1(b) of the Lombardy regional law (r.l. 16/2016 regulating housing services) constitutionally illegitimate. The Court ruled that it was unreasonable to deny access to the public residential buildings to anyone (Italian or non-Italian) who when filing their application, was not a resident or had not been in employment in the Region for at least five years. The prerequisite of previous long-term residence implies unequal treatment to the detriment of those without and has no reasonable connection with the underlying rationale of the act, which was to provide housing to those without.

The Milan District Court (sec. labour, ord. 24 November 2020, No. 6709) identified the same features of irrationality and discrimination in the Lombardy Region deliberation, which introduced a criterion of two years residency to access the financial support "B1 Measure" which ensured that persons with serious disabilities would be able to stay in their own homes and life context. The Court ordered the Regional Council to amend the cited regulation and to reopen the application process to access this service for at least three months.

The Milan Court of Appeal (judgment 29 December 2020, No. 77) dismissed the appeal of the Lodi Municipality and confirmed the discriminatory nature of the municipal regulation for access to social welfare benefits that require additional documentation for citizens of non-EU States. While EU citizens were able to self-certify that they had earnings or properties registered abroad, non-EU citizens had to file a certification issued from the relevant authorities in the foreign State, with a translation legalised by the Italian Consulate authorities. In the Court's opinion, the new provision had unfairly restricted the number of people who could have benefited from the welfare services and undid the previous standards of equal treatment between Italian citizens, EU citizens and citizens of non-EU States (see also District Court in Milan, ord. 20 March 2020, No. 40830; see *Yearbook 2019*, p. 220).

B Discrimination based on Disability in Work and School

The Civil Cassation (sec. labour, judgment 7 July 2020, No. 14075) declared the Ministry of Transport and Infrastructure's appeal inadmissible. The appeal came after a judgement from the District Court in l'Aquila. The case concerned the exclusion of a visually impaired switchboard operator (receiving welfare benefits under l. 104/1992) in the distribution of overtime shifts, who had been working at the facility since 2001 and, therefore, should have been included in the shift schedule. The only reason for her exclusion was her disability, and therefore it presented itself as a violation of the principle of equal treatment (art. 2, law 67/2006: Measures for legal protection of persons with disabilities who are victims of discrimination): therefore, the District Court had ruled it discriminatory. The appeal to the Civil Cassation was inadmissible as instead of bringing arguments in terms of violations of law, only small factual points were contested, which is outside the scope of the Court of Cassation.

The District Court in Rieti (judgment 12 February 2020) found that the behaviour of a school administration that, due to budgetary limitations, chose to reduce only the hours of support for a child with disabilities instead of a general reduction in the curriculum for all students, constituted a violation of the right to equal opportunities and can be seen as indirect discrimination. Law 67/2006 defines discriminatory behaviour as any act or conduct that, even if apparently neutral, puts a person with disabilities in a disadvantageous position. The Court cited art. 24 of the CRPD; articles 14, 21 and 26 of the CFR; art. 19 of the TFEU; and finally articles 2 and 3 of the Constitution. In the case in question, a seven-year-old pupil with an emotional disorder due to a delay in speech development was given an Individualised Education Plan (PEI) assigning him eleven hours of support a week, while the school administration had only supplied him with five hours for over half the school year. (On the fact that a PEI consolidates a real and true fundamental right, see *Yearbook 2020*, p. 350).

C Religious Discrimination

The Supreme Court referred the judgment on the disciplinary significance of a teacher removing the crucifix from the wall of the classroom where he was teaching to the Joint Sections. According to the school headteacher, the teacher violated the provisions requesting that teachers leave the symbol on the wall, in compliance with the decision of the students in their students' assembly. The teacher challenged the legitimacy of the disciplinary action.

The Court of Cassation's order recalls the judgment of the Grand Chamber of the ECtHR *(Lautsi and others v. Italy)*, which stated that the crucifix is undoubtedly a religious symbol, but it also expressed a broader tradition and therefore was not sectarian or a form of indoctrination *(*see *Yearbook 2012*, pp. 343-345*)*. The Italian Court added the need to verify the compliance of the teacher's punishment (a thirty-day suspension) with the legislation on discrimination (lgs.d. 216/2003). Encroaching on the teacher's religious freedom could in fact constitute indirect discrimination, defined as "a specific disadvantage for a person who adheres to a determined religion", compared to workers who do not identify with that ideology. The referral to the Joint Sections resulted from the need to ensure whether a situation of indirect discrimination exists and whether the wishes expressed in a students' assembly can legally restrict the religious freedom of the teacher (Civil Cassation, sec. labour, ord. 18 September 2020, No. 19618).

On the protection of personal freedoms and non-discrimination on the basis of religion, the Court of Cassation (sec. I, ord. 17 April 2020, No. 7893) received a referral presented by the *Unione degli Atei e degli Agnostici Razionalisti* (UAAR) concerning the dismissal of the case presented by the Municipality of Verona in which ten posters with the word "God" (*Dio*) in large print, with the first letter crossed out and underneath (in smaller characters) written : "ten million Italians are living well without "D". And when they are discriminated against, the UAAR is on their side". The Municipal council had found that the message communicated through the poster could potentially be harmful to any religion. UAAR complained about the discriminatory nature of the measure. The application was dismissed in both the first

and second instance courts. The Supreme Court recalled that the principle of equal treatment of religious beliefs (enshrined in articles 1 and 2 of Directive 2000/78/EC and recalled by articles 43 and 44 of lgs.d. 286/1998 establishing anti-discrimination procedures) and ruled that equal treatment for all beliefs and religions must be guaranteed, including atheists and agnostics. The interference in the communication of the UAAR 's therefore constitutes discriminatory behaviour.

The Regional Administrative Court in Rome (Lazio Regional Administrative Court, Rome, sec. III, judgment 9 October 2020, No. 10273) concluded that students who opt out of Catholic religious education have the right to an immediate alternative curricular activity. The complaint had been brought before the Court by the UAAR due to the fact that in many schools alternative educational activities often started later in the school year, with negative consequences on the quality of those activities. This may conflict with the principle of non-discrimination for religious reasons and the right to education. The provision was written in a Ministry of Education memo from 2012, according to which the decision to participate in Catholic religious education lessons must be communicated by parents from the child's enrolment in the successive school year (therefore, months before the beginning of lessons), while the choice of educational activity for those not participating in those lessons could be made at the start of the school year (in October), is therefore nullified.

The Court of Cassation confirmed that the institution of Islamic law that foresees the break-up of a marriage through the right of the husband to unilaterally repudiate his wife is not admissible in Italian law. In this context, articles 2, 3, and 29 of the Constitution, art. 14 ECHR (prohibition of discrimination); art. 5, Protocol VII ECHR (moral and judicial equality between spouses), art. 16 CEDAW, as well as art. 111 of the Constitution in relation to art. 6 ECHR (Right to a fair trial and equality of substantive and procedural equality between the parties) were violated (Court of Cassation, sec. I, judgment 7 August 2020, No. 16804).

D Discriminatory Algorithm used for Company Structures

The algorithm used by a company working in the food home delivery sector (Deliveroo) was ruled as intrinsically discriminatory by the District Court in Bologna (sec. labour, ord. 31 December 2020). The discriminatory nature concerns the use of standards that aimed to create a "reputational" ranking list of its employees based (among other things), on incidents where the employee did not turn up to a booked delivery session. Falling lower down in the ranking list exposed the employee to the risk of losing future job opportunities and of being side-lined when choosing shifts. In the opinion of the district court, the algorithm contained a neural and reasonable criterion, but since it did not take into account the reason for the employees' failure to show up for the booked shift, it ended up penalising valid reasons for absence, including participating in a union strike action. The District Court condemned the company to remove all effects of the discriminatory behaviour by publishing the judgment on its own website and in a national newspaper and was ordered to pay the applicants €50,000 with respect to non-pecuniary damage.

E Provisions for Victims of Race Laws

The Council of State confirmed the judgment of the Lazio Regional Administrative Court which held that the laws recognising the right to benefits to persons persecuted for racial reasons pursuant to laws 541/1971 and 17/1978. According to the applicant (The Prime Minister's Office), this status (and therefore the related benefits) was not applicable to a woman born on 14 June 1944 to a Jewish-Italian family, who had lived in conditions that exposed her to racial discrimination for a few days, until the liberation of the city of Macerata from Nazi-Fascist troops on 30 June 1944. The child was born in a stable, in poor hygiene conditions due to this racial persecution. The father had escaped from the Urbisaglia internment camp where he had been imprisoned due to his Jewish heritage. Between 1941 and 1944, he hid out with his wife in the Macerata countryside, thanks to the generosity of a local family. The Council of State, reiterating the Regional Administrative Court's decision, acknowledged that the illness contracted by the applicant at birth was due to the poor hygiene conditions and that it was linked to the fugitive status of her parents: both Italian citizens but of "Jewish race". It also acknowledged that the fact that the child was new-born did not exclude her from being a victim of the anti-Jewish laws, the consequences of which lasted much longer than the date of the liberation of Macerata; and that the persecutory laws had caused her economic damage, given the internment and loss of work of her father and the difficult situation the family lived through in the years following. (Council of State, judgment 24 December 2020, No. 8312)

VI Rights of Persons with Disabilities

A Leave to Assist Persons with Disabilities: Assistance Benefit

Teachers who care for parents with serious disabilities have presented a series of cases claiming that they were not given priority in ranking lists to move to a new school. The right to express a preference on whether to be transferred to a new school for an employee who must regularly assist a family member with disabilities should be seen as constitutionally significant (District Court in Palermo, sec. labour, judgment 3 July 2020, No. 1947). This right is not absolute or without limits, as it is guaranteed only when compatible with the interests of the community and within the economic and organisational needs of the employer (the reference to "where possible" in art. 33 of law 104/1992 Framework Law for assistance, social integration and rights of handicapped persons) (District Court in Imperia, sec. labour, judgment 3 August 2020, No. 35; District Court in Arezzo, sec. labour, judgment 15 September 2020, No. 169). The provisions of the National Integrative Collective Contract for schools are therefore illegitimate and void in the section which does not provide any opportunity for priority in transfers (even within a province) for those individuals provided for by art. 33, l. 104/1992, with the aim of protecting both the worker's rights and those of the person requiring assistance (District Court in Palermo, sec. labour, judgment 15 October 2020, No. 2992; District Court in Lamezia Terme, sec. labour, judgment 14 August 2020, No. 3128).

The District Court in Cassino (sec. labour, judgment 30 September 2020, No. 371) confirmed the right of a teacher who had repeatedly requested the school headteacher to allow her to take days off and integrated all the required accompanying documents, every time, however, receiving in response a request for more, unspecified supplementary documents. The Court reiterates that school administration must not negate their responsibility to fairness and good faith, which are fundamental in all contractual relationships. The Catanzaro Court of Appeal (sec. labour, judgment 17 July 2020, No. 604) clarified that granting three days permission a month to care for a family member with disabilities comes under the management of work relationships and is the responsibility of the employer. The latter have the right and the duty to verify the conditions set out by law. INPS intervenes only with a general prior check to ensure the fairness of any financial provisions.

The Civil Cassation (sec. labour, judgment 25 September 2020, No. 20243) dismissed the appeal of a company which had fired one of its workers, who had a disability, for good cause: the company maintained he used his work leave permits (pursuant to l. 104/1992, art. 33) not only for medical treatment and rehabilitation, but also for social activities that coincide with holidays. The Court of Cassation stressed that contrary to work leave permits issued to family members of persons with disabilities, the purpose of those established by law directly for persons with disabilities is not only to access medical treatment, but also to facilitate socialisation and family and social integration. The Court of Cassation recalled judgment 138/2010 of the Constitutional Court (see *Yearbook 2011,* p. 265), which specified that the need to socialise constitutes a fundamental factor for personal development and the protection of mental and physical health of a person with disabilities. Furthermore, the Court of Cassation cited Directive 2000/78/EC on a general framework for equal treatment in employment and occupation and combatting disability-based discrimination, among others, and various judgments of the CJEU (C-270/16 of 18 January 2018 and C-335/11 and C-337/11 of 11 April 2013).

A caregiver's allowance is due to anyone who is unable to move without the constant help of a caregiver - total invalidity – or to anyone who cannot conduct everyday activities and, therefore, is in need of continuous assistance (partial invalidity – Verona District Court, sec. Labour, judgment 7 July 2020, No. 263). The two criteria are more stringent: difficulty in walking and moving around or completing everyday tasks, also in cases of serious symptoms of depression or illness (District Court in Rome, sec. labour, judgment 1 October 2020, No. 5873; District Court in Crotone, judgment 3 November 2020, No. 699). Constant assistance is also valuable for individuals suffering from mental illnesses who need constant care or who have issues with self-restraint. This also applies in the event the patient is admitted to a public hospital – unless all the assistance the patient needs for everyday life is provided by the hospital itself – and for individuals with single or multiple age-related disabilities. In the present case, the applicant is a woman with a serious chronic illness who requires active and constant supervision (District Court in Salerno, sec. labour, judgment 6 November 2020, No. 2003).

Young children can also benefit from a disability allowance, as there is no minimum age limit (art. 1 para. 2, law 18/1980). The District Court in Ferrara (sec. labour, judgment 21 August 2020, No. 62) granted compensation to

a four-year-old child with type 1 diabetes due to the extra assistance workload. The judge dismissed the arguments of the INPS, which stated that the application had not met the criterion of lack of autonomy in performing daily tasks (the institute claimed that the child's metabolic abnormalities were episodic and did not prevent him from having full autonomy in relation to his age).

B Inclusion in Education; Right to Individualised Educational Treatment for Persons with Disabilities

The Individualised Education Plan (PEI) is a document jointly drawn up by a school and the local health services, which year-on-year defines the educational needs of a child with disabilities to be included in school life from infant school onward. In particular, it sets out the necessary hours of educational support (see *Yearbook 2020*, pp. 350-351). This instrument was updated in 2019 to ensure that students with disabilities are included in school. Various judgments from the Regional Administrative Courts reiterated that the challenges with regard to starting and drawing up a PEI is the responsibility of the administrative courts (Lazio Regional Administrative Court, Rome, sec. III, judgment 3 September 2020, No. 9312; Sicily Regional Administrative Court, Palermo, sec. III, judgments 10 July 2020, No. 1375; 10 July 2020, No. 1366), even though the subject of the judgments concerns subjective rights and therefore should come under the scope of the ordinary courts. Starting the process of a PEI must be timely (Civil Cassation, Joint Sections, judgment 28 January 2020, No. 1870). The provision of a school administration that assigns fewer hours to a student with disabilities than has been laid out in the PEI of the student is illegitimate. The number of hours assigned must be reassessed every year, as it is the right of the student to receive an adequate number of hours depending on their disability, their age, and their needs, through a dynamic and functional approach. There is no right to use one specific treatment for all future years (Campania Regional Administrative Court, Naples, sec. IV, judgment 22 October 2020, No. 4709). The only group with specific competence to determine the number of hours of support is the Working Group for Inclusion (GLHO). The school management staff have no discretionary power to remodel or reduce the number of hours due to lack of resources (Sicily Regional Administrative Court, Palermo, sec. III, judgment 10 July 2020, No. 1421; Lazio Regional Administrative Court, Rome, sec. III, judgment 3 September 2020, No. 9312). Instead, school administrations have the duty to ensure that a specialised teaching staff member is assigned to the student, if necessary, creating posts for support teachers as an exception to the stipulated teacher/pupil ratio (Sicily Regional Administrative Court, Palermo, sec. III, judgment 10 July 2020, No. 1378).

The ordinary courts have jurisdiction over cases concerning the actual implementation of the welfare services and health, social-health, and social care interventions that are outlined in the individualised projects for persons with disabilities (art. 14, l. 328/2000 – Framework law to establish an integrated system of social services and interventions) once they are adopted. In the present case, the applicant is the legal guardian of a woman with a serious disability, who had been given a personalised care plan by the Multidimensional Assessment Unit (UVM) which included the provision of a specialised domestic carer for six hours a day and her admission into a day care centre for people with disabilities. The applicant claimed that there had been a failure to put the services planned by the individual care plan into practice and requested that the services be provided by the administration without delay. The Court of Cassation, referring to the same conclusions as in the case of PEIs in the context of education, reiterated that while

the issue concerning the adoption of individual care plans is within the scope of the administrative courts, once a project has been created, it creates a subjective right for the beneficiary to the concrete implementation of those benefits and services and any dispute relative to their adoption is under the jurisdiction of the ordinary courts (Civil Cassation, Joint Sections, ord. 24 September 2020, No. 20165).

C Accessibility and Eliminating Architectural Barriers to Wheelchair Access

Various judgments at all levels of justice have unambiguously confirmed the collective duty to eliminate all architectural barriers to wheelchair access. The Civil Cassation (sec. III, judgment 13 February 2020, No. 3691) reiterated the discriminatory nature of these barrier, underlining that the right to accessibility makes all laws on their removal mandatory (see Civil Cassation, sec. III, judgment 23 September 2016, No. 18762). The Council of State (sec. III, judgment 9 June 2020, No. 3699) upheld the judgment of the Regional Administrative Court in Milan (sec. II, judgment 14 January 2020, No. 86) which dismissed an appeal by the charity association SOS Giovani against the measures proposed by the Municipality of Milan ordering the elimination of architectural barriers. In new build environments – like the two apartments run by the charity which host and offer educational support to minors between 12 and 18 years old who have been referred by social services – the legal requirements on eliminating architectural barriers are applied, regardless of the actual presence of persons or residents with disabilities. As a principle of social solidarity, problems that affect persons with disabilities must be dealt with collectively. Similarly, the Court of Grosseto (judgment 10 October 2020, No. 669) ruled on a dispute in an apartment block on the installation of an external lift. The co-existence of various residential units brings up a series of different interests: the interests of persons with disabilities is imperative, regardless of their effective utilisation. Still concerning condominium disputes, the Council of State (sec. II, judgment 14 January 2020, No. 355) again showed how the norms on eliminating architectural barriers provided for in l. 13/1989 are applied to the benefit of elderly persons who, while not living with a disability *per se*, suffer other physical difficulties. The Council offered an extensive interpretation both on the law and on the condition of persons in disadvantageous situations, with reference to the CRPD. The case in question concerns a dispute about the installation of a mechanical platform lift along the wall of an apartment block with barrel and cross vaulted ceilings subject to special artistic protection by the Municipality of Naples.

D Detained Mothers with Children with Disabilities

The Constitutional Court (judgment 18/2020 of 15 January 2020) ruled that the regulations for special house arrest (art. 47-*quinquies*, para. 1, law 26 July 1975, No. 354 Prison Administration Act) that are foreseen for detained mothers with children under ten-years-old are illegitimate, in the part which ruled out the application of this provision for detained mothers with seriously handicapped children of any age. In the present case, the applicant had been convicted for crimes of criminal Mafia-like association, repeated extortion and handling stolen goods, with an over ten-year-old daughter with

a complete disability. In the opinion of the Court, in cases of serious childhood disability, protecting maternity and the mother-child bond cannot end after the first phases of the child's life, that is, within the first ten years as is currently provided for by art. 47-*quinquies*. In the event that a child or daughter has serious disabilities, the child's psychological and physical vulnerability exists independently of their age. Human and family relationships are essential for the protection and development of vulnerable persons: the Constitutional Court cited both the CRC and the CRPD accordingly. In conclusion, the Court affirmed the partial constitutional illegitimacy of the article, in the part that does not grant house arrest to detained mothers with seriously handicapped children, specifying that the parole officer must still take into consideration all other legal criteria for house arrest when granting this provision (the need to protect society and to combat further crime).

E Socio-economic Issues

The Constitutional Court (judgment 105/2020 of 6 May 2020) was again called upon by the tutelary judge of the District Court in Modena to rule on the question of constitutional legitimacy on the obligation to take an oath to acquire citizenship, even in the case of a person with serious disabilities (art. 10, law 91 /1992). The Constitutional Court declares the issue inadmissible due to lack of subject matter, since the part criticized by the referring court had already been removed with retroactive effect with judgment No. 258/2017, which declared the constitutional illegitimacy of art. 10, in the part in which the taking of the oath is not exonerated for any person who is unable to fulfil this requirement due to a serious and established disability (see *Yearbook 2017*, p. 265; *Yearbook 2018*, p. 212).

The Constitutional Court (ord. 152/20 of 20 July 2020) ruled on the constitutional legitimacy of art. 12.1, law 118/1971, in the part in which it grants a fully incapacitated individual (that is, with a serious disability which prevents the person from working) a monthly incapacity allowance equal to 282.55 euros in 2018, 285.66 euros in 2019 and 286.81 euros in 2020. According to the Constitutional Court, this is undoubtedly an insufficient amount to guarantee the minimum living requirements of a person and does not respect the right to welfare support, guaranteed to all citizens unable to work under art. 38 of the Constitution, although it must be considered that this is an additional sum that is added to other invalidity welfare benefits. However, it is within the discretion of the State – and not of the Constitutional Court – to determine the amount of the allowance and to identify measures to protect the rights of persons with disabilities. Therefore, the question was declared inadmissible.

VII Social Rights

A Recommended Vaccinations and Compensation for Damages

Art. 1(1) of law 210/1992 (Compensation for individuals damaged by irreversible complications caused by compulsory vaccinations, transfusions and administration of blood products) has been ruled constitutionally illegitimate, in the part with does not provide

for the right to compensation in the event of irreversible health disorders due to vaccinations which are not compulsory but are recommended, such as the vaccine against the hepatitis-A virus. For the Court, the underlying reason for the individual right to compensation, in the event of permanent physical or psychological damage to the person, is not based on the fact that this is a compulsory treatment, but because the person was fulfilling a duty of solidarity for the community. Therefore, considering that the aim of the hepatitis-A vaccine is to protect public (as well as individual) health, articles 2, 3, and 32 of the Constitution make it necessary for the community to bear (through compensation) the negative consequences that the vaccine have had on an individual, even if they were not compulsory (Constitutional Court, judgment 23 June 2020, No. 118).

B Combatting Pathological Gambling and Protecting Health

The municipal rule that limited the amount of time an individual could use machines in betting halls to six hours a day has been ruled legal and properly motivated in reference to the need to protect public health and both individual and collective wellbeing. The Regional Administrative Court (Campania, Salerno, sec. I, judgment 17 February 2020, No. 251) held that the limit on opening hours was proportionate, as it constitutes a minor sacrifice for the owners of these gambling premises with respect to a pursued public interest. Furthermore, in light of the Constitutional Court's indications (judgment 220/2014), the reduction of opening times of betting halls is considered to be an appropriate way to combat gambling addiction and persuade at-risk individuals to turn to other interests (work, cultural and physical activity, etc.). Another similar judgment (Friuli-Venezia Giulia Regional Administrative Court, Trieste, sec. I, judgment 11 February 2020, No. 67) stated that the measures to limit gambling activity that had been adopted by the municipal administration were in compliance with EU law. This put into effect the precautionary principle (art. 191 TFEU) which lays out the duty to put in place all possible measures to minimise or eliminate the risk in question.

C Workplace Protection and Safety; Legal Framework for Riders

The Civil Cassation (sec. labour, judgment 24 January 2020, No. 1663) upheld that relationship between food delivery riders and the delivery companies has all the characteristics of an employment relationship as a salaried employee. The case in front of the Court concerned the business organisation of many riders, who freely accept delivery work by responding to calls that are managed on a virtual platform. However, when carrying out the delivery, the work contractor (that is, the company managing the virtual platform) imposes a time control, geolocation and performance standards on each rider, for example: the obligation to complete the delivery within thirty minutes of a time-slot indicated by the restaurant; the obligation to arrive at the start of a shift in a set departure zone and to turn on their phone's geolocation; the obligation to arrive at the restaurant with their own bicycle, deliver the products, to check that order is correct and to communicate the completion of the operation on the app. Contrary to the decision of the territorial judge, in the opinion of the Court of Cassation, this type of collaboration does not constitute a new kind of employment, half way between freelance and full-employment, but rather it enters into the definition of the latter. This conclusion is supported by the aim to protect all individuals in situations of economic or contractual difficulty, in this case the riders themselves.

Regardless of this context, according to the District Court in Florence (sec. labour, 1 April 2020, No. 886) the employer-contractor still has the duty to provide riders with personal protective equipment to ensure the health and safety of the workers, including (in times of the emergency COVID-19 pandemic) necessary equipment to prevent the spread of the virus.

On health and safety in the workplace, the precise scope of the duties of the employer and workplace health and safety coordinator and the avoidance of accident prevention equipment are recurring subjects. The Criminal Cassation (sec. IV, judgment 19 November 2020, No. 2293) nullified the judgment with which the District Court had attributed criminal responsibility for the death of a worker to the company's workplace health and safety coordinator. After reviewing the general scope of supervision and inspection duties of the workplace health and safety coordinator to ensure the safety and wellbeing of workers, the Court observed that, in the case at hand, the worker had died (electrocuted while driving a concrete mixer truck) during illegal activity put in place during the night shift. During the period in which the fatal incident occurred, work had been suspended due to sudden suspension of the building permit. Although accepting the conclusions of the District Court that stated that the health and safety coordinator had failed in his legal duties, the Court of Cassation doubted that the worker's death could have been avoided by any other behaviour and referred the case to the Cagliari Court of Appeal for a new judgment. In relation to the high supervisory control duty of the health and safety coordinator, the Criminal Cassation (sec. IV, judgment 15 October 2020, No. 2845) clarified that these do not relate solely to inspecting that all procedures are formally carried out correctly, but must cover the specific characteristics of all equipment in use in the workplace (Criminal Cassation, sec. IV, 18 February 2020, No. 12161).

Various judgments reiterated that an employer is legally responsible if it has not ensured that its employees have taken protective measures or verified their effective use, even when the injury occurred due to the worker's incompetence, negligence or recklessness (District Court in Modena, sec. labour, judgment 30 December 2020, No. 454; District Court in Salerno, sec. labour, judgment 7 July 2020, No. 1155; District Court in Palermo, sec. labour, judgment 25 March 2020, No. 263; Criminal Cassation, sec. IV, 13 February 2920, No. 8163). Employer responsibility can only be ruled out in the event that the reckless behaviour of an employee is "abnormal" or exceptional (Bologna Court of Appeal, sec. I, judgment 28 January 2020, No. 7950 (see *Yearbook 2020*, p. 353).

D Agile and Smart Working

Within the legal framework that arose from the emergency of the COVID-19 pandemic, art. 1(7) of DPCM 4 March 2020 recommended that, for all activities that could be done remotely, companies should make the switch to agile working. Private sector workers with serious and demonstrated illnesses or with reduced work capacity were given priority when receiving applications on smart working. The District Court of Bologna (sec. labour, ord. 23 April 2020, No. 2759) recognised the right of a worker with 60% invalidity, living with her daughter who had a serious disability, to work remotely. The decision was based on the applicant's fear that carrying out her job as usual, including leaving her home to get to work and possibly contracting a form of coronavirus, would expose her to a risk of imminent and irreparable harm to both her and her daughter. The judge ruled that the worker should be permitted

to move to smart working as a precautionary and urgent measure *inaudita altera parte*, as the convocation of the other party would prevent the necessary immediate implementation of the measure.

In keeping with the emergency legal provision set out to prevent the spread of COVID-19, once the conditions for workers to move to agile working exist and without prejudice to the constitutionally guaranteed right to entrepreneurship for the employer, the employer has a certain amount discretion on who can be permitted to work remotely. However, this discretion is limited by the principle of reasonableness, by the ban on discrimination and, as previously mentioned, by the need to give priority to workers who have health-related issues. The District Court in Grosseto (sec. labour, judgment 23 April 2020, No. 502) held that the choice of an employer to deny a handicapped worker access to agile working (with no justified organisational reason), and therefore making them choose between taking unused holiday or unpaid suspension from work was illegitimate.

E Dismissals

The Constitutional Court (judgment 16 July 2020, No. 150) declared the constitutional illegitimacy of art. 4 of the so-called *Jobs Act* (lgs.d. 23/2015), in the part which provides that compensation for a worker whose dismissal is formally or procedurally flawed must be based exclusively on the number of years of service. Specifically, the part in question dictates that the payment must be "equal to one month of the last salary to calculate the amount of severance pay due for each year of service". The Court identified that the provision was contrary to the principle of equality, since by only assessing the number of years of service, the law treated profoundly different situations in the same way and overlooks a vast range of variables that might be affecting the worker. Furthermore, the principle of reasonableness has been violated, which should entail fair compensation for the worker and that such compensation should also have a deterrent effect on the employer. Therefore, the reference to mere years of service also violates articles 4(1) and 35(1) of the Constitution, which protect the dignity of workers.

The law that regulates the implementation of the right to study for student-workers (art. 10 of l. 300/1970) cannot be interpreted as a recognition of an absolute right or that an employer has the duty to ensure that the worker can enjoy this right in any circumstance. Therefore, a worker who refused to transfer to India because he had enrolled in a master's degree which required his attendance at lessons is guilty of breaching his contract and can be legally dismissed for just cause. To assess the severity of the infringement, the role of the worker within the company and the impact of this refusal on future duties (as derived from their contract) must be taken into consideration. In the present case, the breach of contract is considered to be serious, as the company had to rely upon an external entity to cover the role that the applicant had not accepted (District Court in Vicenza, judgment 16 September 2020, No. 218).

F Consumers' Rights and Misleading Advertising

The Council of State (sec. VI, judgment 24 January 2020, No. 249) clarified that for television advertising, it falls under the scope of the Italian Competi-

tion Authority (AGCM) to investigate unfair practices and misleading advertising, and not the Communications Regulatory Authority (AGCOM).

In 2020, the AGCOM ruled on the merit of various websites, advertising initiatives and commercial communications containing unfair or misleading contents regarding the spread of COVID-19, aiming to trick customers into buying medicines and treatments. In one case, a simple, rapid self-diagnosis COVID-19 test was classified as a diagnostic tool (Italian Competition Authority, 8 September 2020, No. 28348). Other cases concerned air purification and cooling equipment advertised as equipment to prevent the spread of the virus (Italian Competition Authority, 8 July 2020, No. 28287; 4 August 2020, No. 28334). Once again, the advertisement message of a line of bracelets promoted as capable of fighting the contagion was deemed misleading: the advertisement claimed that the bracelet "emits an electromagnetic wave that repels the one emitted by the virus" (Italian Competition Authority, 10 June 2020, No. 28262).

The Court of Cassation was called to rule on a case of a private individual who had been denied his right to compensation for non-pecuniary damages for nine months of disruption to their fixed telephone line. The District Court had established that the non-pecuniary damage in question was not compensable, as the operator disruptions had not denied him of his constitutionally guaranteed fundamental rights. The applicant submitted that fundamental rights evolve with time and that nowadays the right to a fixed phone service at home should be added to those rights. The Supreme Court recalled that fundamental human rights are without doubt an "open catalogue", which is the reason that rights which in the past were considered secondary are now given as much importance as other fundamental rights (the Court gave the example of: the right to a personal identity, the right to be forgotten, the right to privacy, and the right to an online identity). At the same time, it is not uncommon that rights that were once inviolable progressively lose their legal relevance (for example, the injury of usurping a noble title or seduction with the promise of marriage). However, this does not mean that every time technology or customs give rise to new goods or services, the expectation of being able to have or use them falls automatically under the definition of fundamental human rights. There are two requirements for a legal situation to qualify as a "fundamental human right": the right must concern the person and not their assets – except for the situation of essential material goods such as water, air, food, housing, and medicine – and the prevention of exercising that right must result in a suppression or limitation of human dignity or freedom. Given that the applicant could have communicated using a replacement phone, the Court refused to recognise the compensation claim. It reiterated that the right to communicate with a specific telephone is not a fundamental right for the survival of the person, and impeding the use of a fixed line does not damage human dignity or freedom, nor does it constitute a violation of any constitutionally guaranteed freedom (Civil Cassation, sec. VI, ord. 27 August 2020, No. 17894).

G Childbirth and Maternity Welfare Allowances for Foreign Citizens

Following a series of questions on constitutionality brought up by the Court of Cassation, the Constitutional Court (order 30 July 2020, No. 182) requested a preliminary ruling from the CJEU on the provisions that regulate the

"baby bonus" (*bonus bebè*) to non-EU citizens. The referral to the European Court of Justice fits "into a framework of loyal and constructive cooperation between various guarantee systems, in which the Constitutional Courts are called up to enhance dialogue with the Court of Justice [...] to ensure the highest protection of rights at a systematic level (art. 53 CFR)". The Constitutional Court asked whether the requirement to have a long-term residence permit (as a criterion for access to childbirth and maternity welfare allowances for foreign citizens) is in compliance with art. 34 CFR, which establishes the right to social security and social assistance, and with the principle of equal treatment between EU citizens and non-EU citizens in the field of family welfare benefits, enshrined in art. 12.1(e) of Directive 2011/98 (see *Yearbook 2018*, p.249). The Constitutional Court requested that the preliminary ruling be adjudicate under an expedited procedure, as the issue raised by the Constitutional Court constitutes a grave state of uncertainty on the meaning of an EU law, since it concerns both a key sector of common immigration policy on freedom, security, and justice and the issue of equal treatment between non-EU citizens and EU citizens of that same Member State, the policy of which is a defining and impelling element.

VIII Immigration, Citizenship

A Entry and Residence in Italy; Foreign Minors and Residence Permits for Parents

On recognising residency status for family reunification, a stable relationship between the residence permit applicant and EU citizen (for unmarried couples) does not have to be proven through the instruments presented in civil union law (l. 76/2016), but can also be shown through other appropriate documentation, such as the birth certificate of the couple's child. A judgment of the Court of Cassation clarified the situation: the case in question concerned an Ecuadorian citizen who started a relationship with a Romanian citizen residing in Italy. The couple had a son (also a Romanian citizen), with whom the Ecuadorian citizen declared to have lived from birth. The Court overturned the appeal decision, which had denied a residence permit to the applicant, as a stable relationship between himself and his partner (the mother of the child) had not been proven officially (Civil Cassation, sec. I, judgment 17 February 2020, No. 3876).

The relationship between two siblings, both adults and not living together, does not constitute "family life" as laid out in art. 8 ECHR. Although this concept has been progressively extended in a recent ECtHR interpretation to include situations of loving relationships between people who are not legally conjoined, the case of siblings lacks the fundamental elements from which a shared life can be deduced. Consequently, it is necessary for the siblings to live together in order to obtain a residence permit for family reunification (Civil Cassation, sec. I, judgment 18 March 2020, No. 7427).

The legislation on immigration does not impose a minimum annual salary as a criterion to issue a residence permit, except in cases of an applicant for a permanent residence

permit for family reunification. Outside this situation and its specific references in law, earning a minimum annual wage can be used within the assessment for a residence permit, but cannot be a prerequisite where its non-fulfilment would result in the denial to renew a residence permit for employment (Le Marche Regional Administrative Court, Ancona, sec. I, judgment 15 June 2020, No. 384).

An Albanian couple who, whilst expecting their child, moved from Albania to Italy to receive assistance during the pregnancy from the wife's mother and who, after the birth of their son, had no residence permit in the foreign country, challenged the Perugia Court of Appeal's decree in front of the Court of Cassation. The decree confirmed that the defining criteria for issuing a residence permit for serious reasons connected with the mental and physical development of their child, provided for by art. 31.3 of Consolidated Law on Immigration (lgs.d. 286/1998) were inexistent. In light of the fact that the three-and-a-half-year-old child was settling into the family context made up of his parents and grandmother and was not ready to let go of them, the parents held that they were entitled to a temporary residence permit. The Court instead observed that the permit in question was not aimed at ensuring the general protection of family cohesion of parents and child, but as a way to mitigate the risk of serious harm (concrete or perceived) to the mental and physical integrity of the child. However, this harm cannot be the mere discomfort of moving the child into a different social context. The Court of Cassation dismissed the reasons raised by the couple as inadmissible and ill-founded. It concluded that neither the young age of the child nor the risk of leaving Italy constituted serious reasons under art. 31(3) of the Consolidated Law on Immigration (Civil Cassation, sec. I, judgment 9 January 2020, No. 277; see also Civil Cassation, sec. VI, judgment 28 October 2020, No. 23810).

In another judgment, ruling on a deportation provision, the Court nullified the decision of the Court of Appeal which, in confirming a deportation measure, had failed to consider the eventual harm caused to the younger (minor) sister of the person being repatriated. The Court of Appeal had mistakenly held that there must be a risk of "irreparable damage" to the child's integrity (therefore a situation of exceptional suffering and difficulty) in order to authorise the family's stay. The regulations and case law of the Court of Cassation (see *Yearbook 2011,* p. 285; *Yearbook 2017,* p. 286; *Yearbook 2019,* pp. 337) established the criterion of "serious mental and physical discomfort" of the minor, which it is the duty of the applicants to derive (Civil Cassation, sec. VI, judgment 23 January 2020, No. 1457).

A Moroccan couple lodged an appeal against the Court of Appeal judgment that the pending criminal proceedings against them prevented them from being issued with a residence permit for serious reasons connected with the mental and physical development of their child (art. 31(1) Consolidated Law on Immigration). The Court ruling observed that the tender age of their two daughters (10 and 5 years) also constituted a reason exclude this motivation, as family life could, without trauma, be recreated in their country of origin. The Supreme Court nullified this decision as it was based on an overly restrictive interpretation of the scope of art. 31(1) of the Consolidated Law on Immigration. Firstly, the rejection based on pending criminal proceedings is legally flawed. Furthermore, in denying the application for serious reasons connected to the child's development, the appeals judge had not considered the serious harm children can suffer in the event of repatriation. The Court nullified the challenged decree and invited the new appeals judge to make a balanced judgment between the State's interest in protecting public order and national security and the needs of minors, as the negative assessment of the Court was focused almost exclusively on the former, in view of the

arguments of the applicants who claimed that repatriation would be a traumatic event for their daughters (Civil Cassation, sec. VI, judgment 23 January 2020, No. 1563).

B Aiding Illegal Immigration

The offence of aiding illegal immigration does not simply refer to the illegal entry into Italy, but also to facilitating a person who is already in the country irregularly with their stay. The Criminal Cassation (sec. I, judgment 05 February 2020, No. 15531) ruled on a case of a person who, while not assisting in the entry into Italy of some Brazilian women on a tourist visa, had managed the women's stay after their visa had expired. The Court confirmed that the behaviour of the person could be considered as aiding illegal immigration. In addition to profiting from acts of prostitution by the women, the man managed their movements, collected money from bar owners where the women were made to work and was the owner of the accommodation where the foreign women stayed.

C Citizenship

The State enjoys ample discretion on the granting of Italian citizenship, meaning that the final decision can only be appealed if the outcome was made through insufficient investigation, non-existing information or on illogical, incoherent or unreasonable grounds.

Citizenship can be legitimately denied to foreign nationals who prove to be sympathetic, contiguous, or ideally close to criminal organisations and movements responsible for serious criminal activity, or whose aims are incompatible with national security (Lazio Regional Administrative Court, Rome, sec. I, judgment 12 October 2020, No. 10340) (see *Yearbook 2019,* p. 220). Furthermore, the Administration can derive that the applicant has not fully integrated into Italian society by their continued attitude of strong criticism towards Western culture (Council of State, sec. III, judgment 17 December 2020, No. 8133).

Another obstacle in granting Italian citizenship can be a conviction for driving under the influence of alcohol. This behaviour would conflict with public interest underlying that concession, as well as putting the safety of citizens at risk, demonstrating a lack of full adherence to the values of the Italian community and an insufficient consideration of the duties that come with Italian citizenship. The decree that allows the rejection of citizenship applications is not justified by an assessment of the risk of the person, but through an evaluation of the applicant's social inclusion in Italian society: the applicant's lack of a clean criminal record can be taken as a source of public concern (Regional Administrative Court of Rome, sec. I, judgment 1 June 2020, No. 5762).

When applying for naturalisation, if the applicant fails to declare any irrevocable criminal convictions, the application will be dismissed, regardless of whether the documents were falsified. In the opinion of the administrative court, this failure to communicate is indicative of a lack of integration, in addition to demonstrating the lack of understanding of the principles which regulate the proceedings (Regional Administrative Court of Rome, sec. I, judgment 31 August 2020, No. 9289). The same applies in the event that a non-authenticated documentation or with falsified signatures of civil servants, even if, as the applicants claimed, this is due to the criminal behaviour of the foreign agency that had been employed for the practice. The applicant can file their request again with

authenticated documents (Regional Administrative Court of Brescia, sec. II, judgment 4 February 2020, No. 99).

The decree of the Ministry of Interior that denied Italian citizenship to an applicant who had been charged with infringement of building regulations was considered illegitimate. It is not legal to consider that the crime in question indicates that the applicant is untrustworthy or that they have not integrated into Italian society. Furthermore, the Latina Regional Administrative Court regretted that the government had not taken into account the background checks of the applicant on criminal records and pending charges, which did not show evidence of criminal activity. Moreover, other usual evidence showing the degree of integration of the applicant had been omitted from the investigation, such as his thirty-three years of living in the country, his marriage with an Italian citizen and his two children, both born in Italy (Regional Administrative Court of Latina, sec. I, judgment 8 June 2020, No. 190).

D Transmitting Citizenship *Iure Sanguinis* through a Female Ancestor to those Born before the Entry into Force of the Constitution

The District Court in Rome recognised the Italian citizenship of the applicants by descent, whose genealogical link is present only through the female line of the family. According to the law in force before the Constitution (articles 1 and 10 of l. 555/1912), citizenship was acquired only through the male line and a woman who married a foreign man lost her Italian citizenship. This law blocked the passing down of citizenship through the female line of ancestry, preventing children of women who married foreign nations from obtaining Italian citizenship *iure sanguinis*. As a result of various judgments on the constitutional illegitimacy of these laws (No. 87/1975 and 30/1983), from the date of the Constitution's entry into force, Italian citizenship had to be recognised to the women who had lost it, as well as their children who had never been able to obtain it. However, in cases where the female ancestor was born before 1 January 1948 (entry into force of the Constitution of the Italian Republic), it is still necessary to obtain a judicial ruling that extends the declaration of unconstitutionality's effects of the laws in question to these cases (District Court in Rome, sec. I, judgment 1 September 2020, No. 11818; ord. 9 October 2020). However, for a male ancestor, the fact that the person was born before the entry into force of the Constitution does not prevent the acquisition of Italian citizenship, even if the ancestor emigrated abroad and, therefore, allowed the passing of that citizenship down to his descendants, even if they were born or are resident abroad (District Court in Rome, sec. I, judgment 10 June 2020, No. 8352).

IX Freedom of the Press – Right to Report and Criticise. Right to Private and Family Life

A Illegal Use of Personal Data

On disseminating or communicating personal data without the consent of the interested party for journalistic ends, the restrictions of the right to report are applied, specifically, that the information must convey news that is in the public interest (see *Yearbook 2020*, p. 362). The Court of Cassation overturns

the judgment of the District Court in Milan, holding that the publication of photographs which depicted a famous journalist and TV presenter, noted for his commitment to social issues and those less fortunate, as a guest in a luxurious resort in the Maldives with his wife was irrelevant from a public interest point of view and denying that it was aimed at "informing public opinion on a socially useful matter". On the criteria of "matters of public interest", the Court of Cassation concluded that this interest must be weighed against the type of "light" news reporting favoured by the newspaper in question and its audience. The publication of photos taken (with a telephoto lens) in a public place without the person's consent in "scandal sheets" tabloid newspapers comes within the scope of the right to report, provided that they do not harm the dignity or reputation of the individual (Civil Cassation, sec. I, judgment 24 December 2020, No. 29583).

The Supreme Court confirmed that the acquisition and dissemination of a telephone conversation between a then-minister and a journalist who was imitating the President of the Apulia Region at the time was illegal. The journalist had not only disguised his own identity but also violated the principle of truthfulness, impersonating an individual in a privileged relationship with the minister, with the aim of obtaining confidential information. The telephone call was broadcast live on the radio. The journalistic purposes can justify the practice of concealing one's own identity. Nevertheless, the Charter of Duties of Journalists, recalled by art. 139 of lgs.d. 196/2003 does not allow the impersonation of an individual under any circumstances, as it is regarded as a ruse that does not respect the dignity of individuals (Civil Cassation, sec. I, judgment 24 December 2020, No. 29584) (see *Yearbook 2020*, pp. 337-338).

Printing the photo of a child taken during a public protest (or private but publicly relevant demonstration) without getting valid consent for its use can be legitimate if the minor is framed by chance, not focusing attention onto the identity of the child. The Civil Cassation (sec. III, judgment 13 May 2020, No. 8880) held that the acquisition and publication of the photo of two minors taken without their consent is illegitimate. The presence of signs informing the public (and therefore the children) of an ongoing publicity photo shoot inside the water park does not substitute consent, as the children were the focus of the photographs.

B Reputation and Defamation

The false accusation of an extra-marital affair constitutes defamation, as, in light of shared ethical standards, it is an example of disclosing behaviour that would likely be met by the public's disapproval and therefore hurt the reputation of the victim. The husband of the woman, when reporting the illicit behaviour, declared unjustifiably that she was cheating on him. The Court of Cassation encountered the crime of defamation, in addition to that of slander (Criminal Cassation, sec. VI, judgment 5 February 2020, No. 13564). Similarly, this issue was handled by the Supreme Court (Criminal Cassation, sec. V, judgment 28 September 2020, No. 33106), but with different outcomes. It concerned a note written by an investigative agency that contained harmful information about the honour of a woman falsely accused of adultery; this

does not fall within the definition of defamation, as it was sent by email to the investigator's client, and therefore does not constitute, from a psychological point of view, "mass communication". To establish that the offence of defamation has taken place, two factors are necessary: the oral or written communication that harms the reputation of another person and the intention that the derogatory statement is heard by multiple people. In the judgment of the case at hand, there is no evidence suggesting that the investigator knew that the client would use the outcome of the report in a divorce settlement, therefore exposing the statement to third parties.

C Right to Report

A journalist who had erroneously reported that the defendant in a trial was the relative of an exponent of organised crime cannot claim the right to report as a justification for the mistake, given the failure to verify the information. Moreover, when the source of the inaccurate information is an off-the-record statement of a police officer, the Court held that this does not exempt the journalist from their duty to verify the news (Criminal Cassation, sec. V, judgment 12 February 2020, No. 14013). The right to report can be recognised for journalists who faithfully report statements of public figures during an interview that are objectively damaging for the reputation of another person. The right is guaranteed regardless of the truthfulness and self-restraint of the reported statements, with respect to the prevailing public interest in hearing the opinions of the interviewee, given his reputation and that of the offended party, and the public relevance of the underlying affairs. Therefore, the Court of Cassation (sec. V, judgment 17 September 2020, No. 29128) quashed the decision which rejected the defence based on the right to report for columnists and editors that published newspaper headlines containing the words of a man accused of bankruptcy fraud which aimed at insulting a public prosecutor of the Rome tribunal.

D Right to be Forgotten

The Supreme Court annulled the judgment (Pescara, 1 June 2017) that had ordered the removal of a news art. (published online) which reported on the conclusion of criminal proceedings for fraud in public procurement. The Court of Cassation observed that in the case at hand, the judge had not correctly balanced, on the one hand, the right to be forgotten of the person involved and, on the other, the public relevance of the case, the freedom of expression and of press, and the public interest to keep the news story for social-historic and archival purposes. Furthermore, the Court added that, notwithstanding the legal character of the original publication, the right to be forgotten can be satisfied through the de-indexation of the art. from search engines (both general and those within a news site) (Civil Cassation, sec. I, judgment 19 May 2020, No. 9147). The similar conclusion arose from another case in front of the Civil Cassation (sec. I, judgment 27 March 2020, No. 7559). The Supreme Court dismissed the appeal of the heirs of a deceased entrepreneur aimed at deleting an online article regarding judicial investigations on the man's potential criminal activity.

X Women's Rights

A Femicide: Civil Liability of Prosecutors

The crimes of femicide (91 women killed in Italy in 2020 according to the EURES database), abuse within the family (art. 572 of the Criminal Code) and persecutory acts (art. 612-*bis* of the Criminal Code) regularly feature in Supreme Court decisions.

On femicide, the Court of Civil Cassation (sec. III, judgment 8 April 2020, No. 7760) commented on the critical issue of how to assess the responsibility of the judicial authorities which have failed to take steps to prevent this crime. The Messina Court of Appeal excluded the civil liability of the Caltagirone Public Prosecutor's Office magistrates regarding the death of a woman, killed by her husband, who had been reported multiple times for violent behaviour during the separation of the couple and the consequent litigations over the custody of their two children. The femicide took place in the street using a knife and in the presence of the woman's father. The first judgment ruled that the public prosecutor's office (acting with gross negligence) had failed to take any restrictive steps concerning the man: in particular, it had not searched the property or sequestered the knife (the probable murder weapon) with which the man had threatened the victim in the past. Following verification of this liability, a sum of around 260,000 euros was paid to the two orphans. The appeal judgment overturned the conclusions of the Court, stating that since the resolve to commit murder against his wife appeared rooted in the mind of the offender, the failure to investigate could not be considered significant in its outcome (femicide). The Court of Cassation contested this way to interpret the causal link between the magistrature's intervention and the murder. Messina Court of Appeal had mistakenly applied the criterion of "more probable than not". Instead, it is necessary to assess whether conducting the investigation as would have been legal and dutiful to do, in light of the circumstances mentioned, would have significantly reduced the likelihood that the incident happened in the first place. As it is a matter of substance, this assessment must be conducted in new proceedings by the Catanzaro Court of Appeal.

B Abuse within the Family; Threats; Stalking; Sexual Violence

A child who witnesses abuse within the family (art. 572 of the Criminal Code) is also considered an injured party and can therefore legitimately constitute a civil party and challenge a provision that is against their interests. In the case in question, the dispute concerned the failure to sentence the perpetrator of abuse against his partner to also compensate the children for the damage suffered by having witnessed the incidents of violence. The Milan Court of Appeal had dismissed the appeal of the first instance court sentence, maintaining that the couple's children, even though they had witnessed three episodes of stalking and injuries to their mother, were not direct victims of the crime. Although law 69/2019 (the so-called "red code") which added a fourth paragraph to art. 572 of the Criminal Code ("A minor of under 18 years who witnesses abuse under the current art. is considered an injured

party to that crime") could not be applied (*ratione temporis*), the Supreme Court instead applied the principle This demonstrated that while the acts of physical violence targeted only the mother, they had had a grave impact on the wellbeing of the children, who were frightened to the point that they did not want to leave the house, in order to be ready to defend their mother. (Criminal Cassation, sec. V, judgment 20 November 2020, No. 74) (see *Yearbook 2020*, pp. 367-368).

The crime of abuse within the family and cohabiting couples (art. 572 of the Criminal Code) absorbs the crime of persecutory acts (stalking) (art. 612-*bis* of the Criminal Code) even in cases where cohabitation comes to an end, if an emotional relationship based on solidarity still exists between the perpetrator and the victim. Instead, the offence of persecutory acts (aggravated: art. 612.2) occurs if the act takes place after any family link or emotional relationship has ended (Criminal Cassation, sec. VI, judgment 3 November 2020, No. 37077). A relationship of reciprocal friendship is also considered as an emotional relationship (Taranto Court of Appeal, judgment 11 May 2020, No. 161).

The intention of causing fear using threatening behaviour is sufficient to prove the existence of this offence (art. 612 of the Criminal Code), without the need for the victim to be intimidated because of those threats, as it is defined as a inchoate offence. In the present case, at dinner with his partner and daughter and while the television showed the news of a femicide, the accused expressed sentiments such as: "women are better when killed", specifying that "he was in favour of femicide and if he hadn't got his hands dirty himself, he'd get someone else to do it, but he'd never let the victim take his daughter away, he'd put her in a wheelchair instead". The Criminal Cassation dismissed the lack of wilful misconduct on which the Justice of the Peace of Brescia had based the acquittal of the accused. Even though the woman had not shown fear for her own life nor for her daughter, the behaviour of the man was objectively intended to impinge on her moral freedom (Criminal Cassation sec. V, judgment 22 April 2020, No. 12729).

The Criminal Cassation (sec. V, judgment 12 November 2020, No. 11430) clarified the aims of the three-day enforcement deadline pursuant to art. 362, para. 1-*ter*, Criminal Procedures Code, introduced in the recent l. 69/2019 (the so-called "red code"). When investigating an offence of persecutory acts (stalking) (art. 612-*bis* of the Criminal Code), the public prosecutor must gather information from both the accused and the person presenting the complaint or lawsuit within three days of when the crime is reported. The aim is to ensure that any bureaucratic delays do not influence the timely nature of any prevention or precautionary intervention. It is an acceleratory measure to protect victims of domestic and gender-based violence, and the failure to respect it cannot be used by the perpetrator. The Court of Cassation dismissed the appeal of the applicant, as the woman had not been asked to give a statement within three days and confirmed the precautionary measure of a restraining order that prevented the restrained person from approaching places that the woman usually frequented, as decided by the preliminary investigation judge at the Cosenza District Court.

The crime of persecutory acts (stalking) (art. 612-*bis* of the Criminal Code) also arises in the case of night-time phone calls and disturbing comments in public (in front of friends) (Criminal Cassation, sec. V. judgment 6 June 2020, No. 1943). The fundamental aspect of this crime is the serious and enduring state of fear or distress of the victim. Having carefully verified this requirement, the victim not blocking an ex-partner on WhatsApp and trying to call or send messages has no bearing on the case (Ancona Court of Appeal, judgment 14 October 2020, No. 1058).

On various occasions, the Supreme Court reiterated the difference between persecutory acts (stalking) offences under art. 612-*bis* of the Criminal Code, which implies altering everyday life or instilling anxiety, worries, and fear in the victim, and the less serious offence of harassment or disturbance to persons under art. 660 of the Criminal Code. Situations of moderate discomfort - inconvenience or intolerance – are not included under the definition of stalking (Criminal Cassation, sec. V, judgment 18 December 2020, No. 2555), nor are temporary discomfort and annoyances in a daily routine (Criminal Cassation, sec. V, judgment 17 November 2020, No. 1541). Similarly, the behaviour of insistently following a person in a way that does not interfere in their sphere of personal freedom or psychological wellbeing is not punishable as a persecutory act or stalking (Criminal Cassation, sec. I, judgment 18 February 2020, No. 11198). The publication of mocking posts on a Facebook page, (publicly accessible and not aimed directly at the alleged victims) does not fall within the definition of persecutory acts. The behaviour must be invasive, as is the case instead when sending private messages or making phone calls: in the Supreme Court's opinion, it is a "legitimate exercise of the right to report, albeit expressed harshly" (Criminal Cassation, sec. V, judgment 3 November 2020, No. 34512).

Under art. 612-*bis* of the Criminal Code, harassment is only configurable as a crime in the case of threats, harassment, or repeated injuries (Criminal Cassation, sec. V, judgment 10 December 2020, No. 12041). For this reason, the Court accepted the appeal of a man who turned up at a woman's house only once and rang the bell twice, before the *Carabinieri* forces managed to intervene. This repetition can happen over a short time span, for example, in the arc of a single night (Criminal Cassation, sec. V, judgment 13 November 2020, No. 2496).

An application on stalking is irrevocable if there are serious repeated threats, both according to the Criminal Cassation (sec. V, judgment 14 January 2020, No. 5092) and the Taranto Court of Appeal (judgment 27 April 2020, No. 143). In this last decision, the victim had to withdraw her report because she was economically unable to rent a house other than the one she currently shared with her husband (facilitated by the fact that the man was in prison for other reasons). Similarly, the Criminal Cassation (sec. V, judgment 16 November 2020, No. 1172) dismissed the appeal of a man who claimed that the action against him for stalking had not been raised in time, referred to an isolated incident (an argument on the use of shared space in a condominium) and was not linked to any alleged reason for persecution. According to the Supreme Court, although the complaint derived from the condominium meeting incident, this prompted a long series of other documented incidents

and served specifically to move the start date of this complaint (*dies a quo*) to the latest of such a series.

Regarding the issue of stalking, the District Court in Grosseto (judgment 21 August 2020, No. 591) established that the husband and daughter of the victim of stalking are also entitled to compensation. The case concerns repeated sexual harassment via phone calls that went on for years, causing psychological, behavioural, and social issues in the whole family. The daughter developed post-traumatic stress disorder, while the husband suffered from long-term "appearances of irritability", anxiety, anger, and hyperexcitability of his mood.

The context in which persecutory behaviour occurs is irrelevant. Mobbing in the work environment can fall within the legislative provisions of art. 612-*bis*, if the essential features of the crime also exist within that context: the repetition of behaviour that violate the free self-determination of the victim, a change in lifestyle and habits, and the emergence of a state of intimidation and fear (Criminal Cassation, sec. V, judgment 14 September 2020, No. 31273).

XI Children's Rights

A Community Service in Juvenile Justice

The Constitutional Court (judgment 139/2020, 6 July 2020) declares the question of constitutional legitimacy concerning the regime of community service in juvenile proceedings (art. 28 of d.P.R. 22 September 1988, No. 448) as ill-founded. This issue was brought up in reference to articles 3, 27, para. 3, and 31 para. 2 of the Constitution, by the preliminary investigation judge of the Juvenile Court of Florence with an order of 11 March 2019. The Constitutional Court reiterates the importance of community service within the juvenile justice system for its role in re-education, and highlights that this regime must be set out in due time, by a mixed, structurally trained, gender-diverse collegial judge, and only after an in-depth assessment of the minor's personality. The interaction between these criteria influences the outcome of this service and the minor's effective exit out of the criminal justice system. Although not explicitly, the order of preliminary referral calls to mind the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted by the General Assembly with Resolution 40/33 of 29 November 1985, which, *inter alia*, promoted flexibility and deinstitutionalisation of how the criminal justice system treats juveniles. In addition, the Constitutional Court reiterated the functional differences between community service for minors and for adults: the first has a re-educational purpose and is not proportionate to the crime committed, that is, its use is permitted for all crimes; the second serves as a sanction and bargaining tool and is applied only to minor crimes. It requires the specific request from the defendant and often also from the prosecutor (see also *Yearbook 2020,* pp. 369-370).

It is illogical to grant community service (art. 28 of the d.P.R. 22 September 1988, No. 448) if this has been violated in the past. In the present case, during their community service time, two minors convicted of theft and handling stolen goods had committed

a theft with multiple aggravating circumstances with two adults. The Court placed the minors in a residential community home and ordered their continuation in the community service project. This decision was nullified on the basis that the crime had been committed during the community service itself and considering both the risk of repeated offence and a comprehensive social services assessment that underscored a lack of commitment at school, inconsistency, difficulty in time management, disrupted sleep cycles, and an unhealthy lifestyle (Court of Criminal Cassation, sec. IV, judgment 26 February 2020, No. 15714). The failure to discuss the content of the community service program with the minor voids the programme completely; however, this can only be requested by the young offenders themselves. In the present case, the Public Prosecutor's Office at the Juvenile Court of Salerno lodged an appeal in cassation (Criminal Cassation, sec. VI, judgment 9 September 2020, No. 25590).

B Special House Arrest and other Questions on Juvenile Criminal Proceedings

It is within the scope of the Juvenile Court to decide whether to grant alternative detention measures for a person between 18 and 25 years of age, even if the detainees themselves have not adhered (Criminal Cassation, sec. I, judgment 19 February 2020, No. 16252). The age of the accused when presenting an application is the significant factor when determining the scope of the Juvenile Court, rather than their age at the moment of the court's decision (Criminal Cassation, sec. I, judgment 20 February No. 12340). One case concerned a judgment that ruled not to proceed due to the non-imputability of a minor (under fourteen years old). After the Court had given its ruling, the public defender of the minors involved lodged an appeal on the basis of a violation of the right to a defence. The girls had not been allowed to converse and had not been fully informed of the accusations against them, which constitutes a violation of art. 6 ECHR and art. 40 of the CRC. According to the Court of Cassation, establishing the facts even when there are minors of under fourteen involved is the jurisprudence of legitimacy. The Court of Cassation recalls the judgment of ECtHR of 11 December 2008 on the *Panovitis v. Cyprus* case, which stated that the minor also must be treated in accordance with their state of vulnerability, age, level of maturity, and intellectual capacity development in criminal proceedings. This is to ensure the broad understanding and full opportunity for defence of the minor (Criminal Cassation, sec. IV, judgment 30 January 2020, No. 11541).

When re-examining supervision measures concerning a crime is committed by a minor in complicity with their own relatives, it is necessary to assess the self-determination of the minor. In the case at hand, the presence of minors within a family organization dedicated to trafficking and selling drugs does not diminish how the criminal offence is conducted or the social alarm it causes. The Court evoked the principle of "adolescent autonomy" (articles 84, 252, 273 and 264 of the Civil Code) which assumes an adolescent's freedom in their life choices. In this regard, the assessment on self-determination must be founded on biopsychic and socio-economic factors relating to age, the type of crime committed, and the adhesion to basic rules of conduct and ethics. Two further indicators to separately take into account are the actuality principle (the presence of opportunities to commit a crime) and the principle of concreteness (the capacity to commit crime). In the present case, since both these conditions were present, the 17-year-old

girl was placed in a residential community home outside her region of origin (Juvenile Court of Caltanissetta, judgment 27 July 2020).

To address the escalation of restrictions dictated by the need to contain the COVID-19 pandemic, the Milan Juvenile Court replaced the supervision measure of placement in a residential community home with moving the minor back to his own home with an absolute ban on leaving the house, for minors who display attitudes of hostility or intolerance, putting their own or others' safety at risk. The Court clarified that the minor would be returned to the home of the residential community if the ban on leaving the house or any other deviant behaviour was reported (Juvenile Court of Milan, judgment 3 April 2020).

C Crime of Child Pornography

The crime of distribution of child pornographic material (art. 600-*ter*, para. 4 of the Criminal Code) also occurs when sending photos of sexual content via WhatsApp, considering the simplicity of the app's use and easy dissemination. The Trento Court of Appeal (judgment 27 August 2020, No. 114) had to assess harassing messages of image exchanges between a minor and her music group teacher. The girl reported to have met the man in the first grade of middle school (as her music teacher) and successively started a relationship, culminating in a full sexual exchange. The Supreme Court case law is consolidated in its view that it is not necessary to identify any risk of dissemination of child pornographic material for it to be considered an offence. Similarly, the Court of Criminal Cassation (sec. III, judgment 10 September 2020, No. 31192) confirmed that the offence of child pornography (art. 600-*ter*, para. 1, No. 1) is applicable to the case of an individual who, while not producing the pornographic material directly, instigated or induced the minor to do so. Following a judgment of the District Court in Bologna, the defendant claimed that receiving erotic self-shot photos (an expression of the alleged victim's free self-determination) had no criminal implications. The cited art. was applied in the same way in a judgment referring to sexual photographic material produced by a twelve-year-old girl, a victim of online grooming by a man via two fake Facebook profiles (Criminal Cassation, sec. III, judgment 5 March 2020, No. 17188). Child pornography occurs even in the case that the files are deleted, where these can be recovered and seen again (Taranto Court of Appeal, 4 November 2020, No. 539) (see also, Court of Cassation, sec. III, judgment 8 June 2015, No. 24345).

D State of Abandonment and Adoption

The right of a minor to grow up in one's own family is withdrawn if the parent, despite his/her best efforts, is not realistically capable of ensuring a balanced and healthy mental and physical development. In the present case, the maternal aunt of the child requested the Court to arrange (after an assessment by social services) a so-called "open adoption" in order to maintain a relationship with her nephew (Trento Court of Appeal, judgment 6 November 2020, No. 3) (see also *Yearbook 2020,* p. 372). The Civil Cassation (sec. I, judgment 22 September 2020, No. 19825) confirmed the well-established

guidelines which state that the state of abandonment can be ordered when, even though the relatives (within the fourth-degree of kinship, as defined by Italian law) declare their availability, there are no meaningful relationships, nor can any potential remedy that are not traumatic for the child be identified (see also *Yearbook 2020* pp. 372-373). The declaration of availability to care for the child of replacement parental figures (such as a maternal aunt or paternal grandparents) must be accompanied by psychological and emotional relationships that are stable and meaningful, as well as a solid rationale with a perspective to guarantee (both directly and with external support) a safe and harmonious emotional, moral and material situation (Cagliari Court of Appeal, judgment 15 June 2020, No. 17, Rome Court of Appeal, judgment 10 January 2020, No. 132, Rome Court of Appeal, judgment 18 June 2020, No. 2944).

The Rome Court of Appeal (judgment 6 April 2020, No. 1902) reiterated that the parental assessment, which is used to justify the declaring the child in a state of abandonment, and therefore their adoptability, should not focus on the personality of the parent but on their object capability to raise, educate, and care for the child, as it must protect the best interest of the child. In the present case, the appeal of a mother with severe deprivation and instability was dismissed, since her lack of reflective parental functioning and responsibility caused significant delays in the psychological and physical development of her two daughters. The father also showed an absence of awareness and care for the needs of the children, as he was also incapable of developing stable emotional bonds or to undertake healthy, caring and structured parenting. At six years of age, the two girls were unable to express themselves calmly or comprehensively, to eat autonomously and still wore a nappy. In similar cases, the Supreme Court observed the need to conduct an in-depth evaluation of the parents' personalities and their psychological and/or physical state, which must be seriously and permanently deficient (in addition to the current condition of the children) to proceed with a declaration of abandonment (Civil Cassation, sec. I, judgment 13 July 2020, No. 14914; sec. I, judgment 14 August 2020, No. 17177).

On the need to conduct careful assessments of the amount of time needed to recover parental capacity, the Civil Cassation (sec. I, judgment 5 August 2020, No. 16695) reiterated that the primary right of a minor to grown up in their family of origin does not exclude an adoptability judgment if it is not possible to demonstrate with certainty the adequate recovery of the mother or father's parental capacity in times with are consistent with the needs of the child. The fact that the assessment on the state of abandonment must be founded on a broad evaluation of the present situation and not focus exclusively on the socio-economic marginalisation of the family was emphasised by the ECtHR, specifically in the judgment of 13 October 2015 on the *S.H. v. Italy* case and the judgment of 16 July 2015 on the *Akinnibuson v. Italy case* (Civil Cassation, sec. I, judgment 6 August 2020, No. 16737).

On the subject of declarations of adoptability and participation of the child, a minor of over fourteen years old is not required to give their consent to the adoptability proceedings (Civil Cassation, sec. VI, judgment 31 December 2020, No. 30062). Consent from the adopter's parents, the partners of both the adopted and adopting party, of all

adult descendants of the adopting party (whether they are legitimate, illegitimate or biological) is necessary in adult adoptions, in order to protect family interests. In the present case, the legitimate descendent of the applicant had not given his consent to the adoption for sentimental and succession reasons (Milan Court of Appeal, sec. family, judgment 25 October 2020). A particular case of international adoption was referred to the Joint Sections. The issue concerned the Agreement between the Italian Republic and the Russian Federation of 6 November 2008 (ratified by Italy with law 18 February 2019) on collaboration in the child adoption sector. Art. 8 of the Agreement establishes that the judgment on adopting a minor must be given by the relevant authority in the State of origin. A doubt arose as to whether the Agreement was only applicable to full or legitimising adoptions, or whether it was also applicable in special cases (law No. 184 of 1983, pursuant to art. 44). The case concerned a child of Russian origin, permanently residing in Italy since 2011. Recalling art. 1 of the Hague Convention of 5 October 1961 on the notion of habitual residence of the minor, the Joint Sections of the Court of Cassation concluded that the Italo-Russian Agreement is not applicable in specific cases, determined that the Italian court had jurisdiction over the matter and referred the case back to the first section to examine the appeal's other pleas (Civil Cassation, Joint Sections, judgment 13 May 2020, No. 8847).

E Shared Custody

Shared custody represents the right of children to keep up a balanced and meaningful relationship with both parents after a divorce or separation. It requires the exercise of responsibility from both parents (also known as double parenthood). The most important decisions must be taken by mutual agreement or, in case of disagreement, by the judge. Regarding the protection of the best interests of the child, parents must cooperate and communicate on the welfare, education, and development of the child, as well as dividing ordinary and extraordinary expenditure, as far as the economic situation of both parents will allow. There is no obligation to give information, nor can any difficulties concerning unplanned expenses be resolved beforehand (Salerno Court of Appeal, sec. II, judgment 9 November 2020, No. 14). On the distinction between ordinary and extraordinary expenditure (art. 337-*ter* of the Civil Code) the Justice of the Peace of Campobasso also ruled (judgment 30 November 2020, No. 348): as there is no clear legal indication, the assessment is left to the discretion of a single judge, meaning that the outcomes are not always coherent with one another. Most of the case law has ruled out that child maintenance can be flat-rate, or rather, that it can include extraordinary expenditure, being both unexpected and unforeseeable (see also Court of Cassation No. 1562/2020*).* The judge offered an unprecedented distinction between "ordinary expenditure" and "ordinary choices": only the latter imply decisions that have a significance to the child's everyday life and therefore invoke the non-custodial parent. In the present case, the purchase of prescription medicines (not across-the-counter), expenditure for dance classes and for swimming courses all fall into this category. Consent from a non-custodial parent can also take place through a simple WhatsApp message. Consent is crucial for extraordinary expenditure, according to judgment Civil Cassation, sec. VI, judgment 21 February 2020, No. 4513. Various other district courts ruled on the lack of detail of art. 337-*ter* of the Civil Code. According to the District Courts of Termini Imerese (judgment 6 July 2020, No. 431) and

Florence (judgment 15 June 2020, No. 1408), they take the form of occasional, particularly burdensome expenses, which cannot be communicated in advance. The District Court in Salerno (sec. I, judgment 3 January 2020) offered an example of a list of extraordinary expenditures. If later on, the parent who did not make the purchases does not give their consent, the Court is called upon to assess the extent of spending regarding its usefulness and economic sustainability, as well as and on the basis of detailed documented evidence (District Court in Piacenza, judgment 14 May 2020, No. 254).

Dual parenting is the presence of both parents in the child's life, although this does not necessarily mean an equal distribution of time spent with their child. Regular visits are sufficient to ensure a solid emotional relationship between the parent and child (District Court in Messina, sec. I, judgment 7 October 2020, No. 1399 and Salerno District Court, sec. I, judgment 4 September 2020, No. 2107). Similarly, dual parenting does not involve a strict regime of equal time spent at both parents' homes: it is in the best interest of the minor to have a single, stable domicile (District Court in Velletri, sec. I, judgment 6 May 2020, No. 680).

The jurisdiction over questions relating to the custody of children and their maintenance belongs to the Court where the minor habitually resides (art. 8 of EC Regulation No. 2001/20023 of the Council of 27 November 2003). The criteria of the best interest of the child and proximity rule out the applicability of the so-called "over-activity of the prior habitual residence" mechanism, under which it is still possible to lodge applications to a Court of a previous residence (up to three months before). This is also the case when, during separation or divorce proceedings in Italian courts, an appeal is lodged concerning the parental responsibility of a person residing in a different EU Member State. For example, in the case of a minor who had previously lived with her father in Portugal for eight months, the jurisdiction of the Italian Court is still confirmed, as the child's habitual residence was in Italy (Civil Cassation, Joint Sections, judgment 21 December 2020, No. 29171, Civil Cassation sec. VI, judgment 27 November 2020, No. 27160).

Turin Court of Appeal (sec. Family, judgment 19 November 2020, No. 1138) reiterates that the Italian legal system, as well as art. 24, third para., CFR, established an automatic link between procreation and parental responsibility: the duty to take care of one's own offspring arises from birth. Failure to recognise and fulfil parental duties is an offence and may warrant compensation for non-pecuniary damages. This offence can be one-off or permanent (see also, Court of Cassation No. 11097/2020). In the case in hand, the sentence given to the ex-partner of the applicant to pay compensation is confirmed, who, despite having full knowledge of the birth of his daughter, had shown no moral or material interest in her life and never paid child maintenance for her upkeep.

According to the District Court in Imperia (judgment 17 April 2020, No. 230), Municipal services can be used as a tool to recall the parties – two separated spouses who were unable to jointly carry out their parental role due to high levels of conflict – to their responsibility, forcing them to communicate through a third party who aims to guarantee the rights of the child. Designating a public body to exercise parental responsibility gives it the power to settle disputes between parents but does not legally constitute a custody provision for the child. In any case, conflict between unmarried parents does not prevent regular meetings from taking place in whatever way was pre-established (L'Aquila Court of Appeal, judgment 21 January 2020, No. 98), nor the use of the

shared custody of the child (Court of Monza, sec. labour, judgment 28 January 2020, No. 145 and Court of Chieti, judgment 31 August 2020, No. 453).

Various district courts ruled on the subject of exclusive child custody (art. 337-*quater* para. 3 of the Civil Code). The District Court in Brescia (sec. III, judgment 29 October 2020, No. 2182) allowed this form of custody after assessing the degeneration of the father's mental state – who was already suffering from a paranoia-related disorder – and the deterioration of the relationship between him and his daughter. The inaccessibility of a father and the absolute lack of interest in the child can justify exclusive child custody: in the case in hand, the father was staying illegally in Italy, without a fixed address, with multiple convictions for drug dealing and was due to receive a deportation order. The Court underlined that this provision did not affect the title of parental responsibility (District Court in La Spezia, judgment 10 August 2020, No. 392).

Regarding the emergency COVID-19 pandemic, various district courts emphasised that parents' visiting rights (art. 30 of the Constitution) cannot be suspended for health-protection reasons (art. 32 of the Constitution). In the case at hand, the applicant (the mother of a girl with a serious disorder on the autism spectrum) had requested that the visits between the girl and her father be temporarily suspended as it was impossible to adhere to the rules on distancing provided for by the national (d.p.c.m. of 9 March 2020) and regional framework (order of the President of the Campania Region 15/2020). The Court reiterated that the exercise of double parenthood is a constitutional right and recalled that Italy had received complaints from the ECtHR concerning a series of automatic measures that were not able to guarantee the right to protection of family life (art. 8 ECHR) (see *Giorgioni v. Italy* of 15 September 2016, *Solarino v. Italy* case and *Bondavalli v. Italy* case of 17 November 2015) (Court of Torre Annunziata, judgment 6 April 2020). The Court of Milan (sec. IX, judgment 11 March 2020) recognised that the provisions of d.p.c.m. 8 March 2020 did not prevent the implementation of foster care and child custody provisions. The District Court in Terni (judgment 30 March 2020) stated that where in-person meetings were suspended due to the COVID-19 pandemic restrictions, it is essential to ensure that the relationship continues without putting the mental and physical health of the child at risk, for example, through video calls. The District Court in Bari (judgment 26 March 2020) also established that the visiting rights non-custodial parents can take place via video calls.

F Rights in Education: Criminal Sanctions for Failure to send Children to School, Abuse, School Failure, Vaccinations

The Constitutional Court (judgment 219/2020, of 20 October 2020) recognised the inadmissibility of the question of constitutional legitimacy of art. 731 of the Criminal Code in the part which sanctions the failure to respect the obligation to educate children to an elementary level and not the failure to respect the same obligation to the standard of middle school or the first two years of high school. These questions were brought up by the Justice of the Peace of Taranto on articles 3, 30 and 34, second para., of the Constitution, for the failure to align the established framework of penalties with the number

of compulsory years of education (at least twelve years from enrolment in the first year of primary school, or at least until the fulfilment of a three-year qualification by seventeen years of age - law 28 March 2003, No. 53, art. 2, lett. c and lgs.d. 15 April 2005, No. 76, art. 1, para. 3). The Court stated that judgments which extend the list of punishable offences are not admissible. For its part, the Criminal Cassation (sec. III, judgment 3 July 2020, No. 23488) determined that the failure of parents to respect the obligation to send their children to middle school does not constitute a criminal offence, since art. 731 refers only to this failure with respect to primary school.

The Criminal Cassation (sec. IV, judgment 19 November 2020, No. 3459) charged a teacher with abuse for humiliating and offending a twelve-year-old pupil, habitually reproaching him with insults and harsh phrases in front of the class. This behaviour is neither acceptable nor suitable in a school context and can be considered abuse, pursuant to art. 572 of the Criminal Code.

The Regional Administrative Court of Lecce (sec. II, judgment 18 February 2020, No. 233) established that not promoting a child who had exceeded the maximum number of permitted absences in cases in which these are due to serious and recurrent illness is illegitimate. In addition, the Regional Administrative Court considered that the applicant had always got excellent grades; failing her solely due to her number of absences may unfairly compromise her educational growth and personal development.

Two judgments concern the obligation to be vaccinated to enrol in infant school services. The Regional Administrative Court of Milan (sec. III, judgment 2 November 2020, No. 2057) confirmed that it is legal to exclude a child from infant school services if her parents have not presented her vaccination certificates on time. The Regional Administrative Court invokes art. 3, para. 1 of l.d. No. 73 of 2017, converted into law No. 119/2017, under which headteachers and educational services managers of infant schools must request compulsory vaccine certification from parents or guardians when enrolling the child into the school, to be submitted by a determined date. In the present case, parents had only submitted a declaration attesting that they had an appointment with their local health authority to receive information on vaccines and mistakenly thought that the obligation to obtain the vaccination certificate was the duty of the school. The Regional Administrative Court of L'Aquila (Abruzzo Regional Administrative Court, L'Aquila, sec. I, judgment 12 March 2020, No. 107) clashed with a parent who refused to produce the requested documentation due to their wish to not vaccinate the child and, in this way, protect their health. Firstly, the Regional Administrative Court commented on the need to preserve the right to health, which is a fundamental right of equal constitutional rank as the right to education and on inviolable duties on social solidarity (art. 2 of the Constitution). Following these comments, the Court focused on the institutional communication and information initiatives of the school and the health authority. In this respect, the Regional Administrative Court cited the Convention of Oviedo, ratified by the Italian State with law No. 145/2001 and art. 191 of the Treaty of the EU. In conclusion, the Court stressed that exoneration from compulsory vaccines could be conceded only in the event of a certain danger to the health of the person, with respect to documented clinical illnesses or in the case of specific side effects for the child. For more on the subject of vaccinations, see, in this Part, VII, A.

G Right to be Heard for Minors and Self-determination in Inter-personal Relationships

On the right to be heard for minors, the Civil Cassation (sec. I, judgment 30 July 2020, No. 16410) ruled on the failure to listen to a nine-year-old child in proceedings concerning the request from her maternal grandparents to see the child after her parents' separation, to be conducted at the child's mother's house. The Juvenile Court had dismissed the request, as the grandparents had not taken part in a re-engagement process with the child thereby having failed to demonstrate their educational and emotional capacities. The Court of Cassation recalls the right of grandparents to create and maintain meaningful relationships with their grandchild (based on articles 8 ECHR, art. 24 para. 2 CFR, articles 2 and 30 of the Constitution) and the right of the child to be heard in proceedings that concern them (art. 12 CRC), if necessary, by delegating a special guardian. The child is not a formal party, but can participate on a personal level in proceedings and is acknowledged as having interests that may clash with those of the parents. The failure to listen to the child does not nullify the proceedings, but allows for the possibility of challenging its outcome, particularly when the lack of a hearing seems unjustified. In the present case, the failure to conduct a hearing for the child was justified due to the age of the minor (nine years old); nevertheless, the Court of Cassation stated that the age or the minor does not, per se, mean that they are incapable of discernment and lacking in judgment.

H Crime of Failure to Provide Assistance

The Constitutional Court (judgment 145/2020 of 10 July 2020) ruled on the constitutional legitimacy on administrative sanctions for failure to pay child maintenance (art. 709-*ter* of the Civil Procedures Code), which could potentially "double" any criminal sanctions (art. 570 of the Criminal Code) for the same offence (prohibition of *bis in idem*). The District Court in Treviso had raised three questions of constitutional legitimacy concerning art. 709-*ter*, para. 2, No. 4 of the Civil Procedures Code, for violating articles 117(1) (concerning the prohibition of *bis in idem* established by art. 4, Protocol No. 7 ECHR), 25(2) (in the part in which the challenged provision sanctions "any actions that could cause injury to the child"), and 3(1) of the Constitution (where it unreasonably defines the maximum limit of the fine at 5,000 euros, which is much higher than the "criminal sanction" provided in art. 570 of the Criminal Code for the crime of violating duties to provide family assistance, which sets the maximum fine at 1,032 euros). In the case at hand, the separated husband had already been convicted with failure to provide child maintenance for his daughter. Therefore, his trial before the administrative court could be considered equivalent to a second criminal sanction. After summarising the path towards the reform of art. 570 of the Criminal Code and the legal framework on the prohibition of *bis in idem* in ECtHR case law, the Constitutional Court recalled the recent evolution of the interpretation of this prohibition in mixed penalty proceedings, specifically the judgment of the Grand Chamber on 15 November 2016 on the *A.B. v. Norway* case. Subjecting a person who has already been administratively sanctioned to a criminal trial does not in itself violate the *ne bis in idem* principle, as long as

there is a sufficiently close substantial and temporal connection between the two proceedings and the total sanctions do not constitute an excessive sacrifice for the accused. Sanctions must have separate, yet integrated purposes, enough to be predictable and to have different profiles of the same antisocial conduct as their subject matter. In addition to this "substantial" profile, the *ne bis in idem* principle has a procedural aspect: the law attempts to generally prevent an individual from having to go through multiple substantially criminal legal proceedings that concern the same criminal conduct. By reason of this interpretation on the subject, the Constitutional Court concluded that the sanction established by art. 709-*ter*, para. 2, No. 4 of the Civil Procedures Code (recognised as substantially criminal in nature, even if nominally administrative) cannot be said to be fully integrated and connected with the sanction for offences under art. 570 of the Criminal Code, so much so that it can only be imposed through a specific request by the spouse during procedures to terminate the civil effects of marriage. Consequently, to be compatible with the Constitution and coherent with the ban of *ne bis in idem*, the outcome must be that the infringements to be sanctioned (under art. 709-*ter*) are any violations that have caused non-pecuniary damage to the child, with the exception of the failure to pay child maintenance, if this conduct has already been punished in criminal proceedings. The amount due for an administrative sanction is higher than for criminal; however, this is not unreasonable as the norm takes into account that a criminal sanction holds a greater stigma.

The parameters of the offence provided for by art. 570, para. 2 of the Criminal Code (violating the duty to pay child maintenance) includes a partial non-fulfilment of the duty to make maintenance payments when the money provided does not cover the beneficiaries' basic needs. The Court of Cassation had recently confirmed that the minor age of the child represents in itself a subjective condition of need (see Court of Cassation No. 17766/2019). The Court noted that the economic difficulty of the defendant does not rule out the offence of violating his duty to pay child maintenance, on the condition that the person is not in a situation of poverty. In the present case, the man, though able to work and contribute to his family, had never shown any interest materially or emotionally in the child and had never paid any child maintenance for his upkeep. Therefore, he had knowingly and voluntarily denied child maintenance payments to his son (subjective element of wilful misconduct) (Ancona Court of Appeal, judgment 17 February 2020, No. 131). The Cagliari Court of Appeal (sec. I, judgment 22 April 2020, No. 150) and the District Court in Naples (judgment 3 March 2020, No. 2630) reiterated that the child's state of need does not have to be proven and that from this the parental duty to contribute to their maintenance and well-being is derived.

I Violence against Children

Various judgments have contributed to clarifying some aspects of criminal law that protect minors from sexual violence. The Criminal Cassation (sec. IV, judgment 21 January 2020, No. 4903) emphasised that the status of taking a child into care, which accompanied the punishable offence of sexual acts committed against a minor between fourteen and sixteen years old, does

not require a formal custody indictment from the victim's parents. In the case in hand, the defendant was a school caretaker, who, given his role in allowing students to enter the school, student supervision and surveillance, was trusted by those same students, both inside and outside the school environment. The defendant was convicted pursuant to art. 604-*quater*, para. 1, No. 2 of the Criminal Code for acts of sexual nature in both a school bathroom and a parish hall bathroom. The District Court in Taranto (sec. I, judgment 2 March 2020, No. 233) excluded the grounds of migrating circumstances due to the less severe nature of the offence in the case of acts of sexual violence (art. 609-*bis* of the Criminal Code) carried out in abuse of a position of trust: the offender was the maternal uncle of the twelve-year-old girl. The District Court in La Spezia (judgment 2 July 2020, No. 120) acknowledged that acts of sexual violence against children, aggravated by the minor age of the victim also exist when there is no penetration, in the case of repeated inappropriate touching to the detriment of a nine-year-old girl with a slight mental handicap, who had been entrusted to the perpetrator by her parents when they were at work.

The Ancona Court of Appeal (judgment 13 February 2020, No. 58) stated that the repeated and incessant nature of attacks on the sexual freedom of a child is in itself an obstruction to granting migrating circumstances due to the less severe nature of the offence (art. 609-*bis*, para. 3 of the Criminal Code). In the case at hand, a seventy-two-year-old pensioner who was volunteering with the Municipality was convicted for sexual violence (touching, attempted kissing, and touching of the genital area) against a child with disabilities on a minibus adapted for her transportation. The Criminal Cassation (sec. III, judgment 2 July 2020, No. 25266) confirmed the order of the preliminary investigations judge of the District Court in Pavia: the Court decided that the sending of a series of suggestive messages and erotic and sexually explicit photographs on WhatsApp to a minor constituted a sexual violence offence. While this sexual violence was not the result of physical contact, the acts of the offender (including threats to post the chat on Instagram and other sites) clearly aimed to violate the sexual freedom of the minor. Similarly, the Court of Cassation was unable to find that there had not been an invitation to go on a date, given the intense online sexual relationship that existed. The Court of Cassation considered that it was impossible to apply the legislation on grooming (which refers to behaviour aimed at building trust with a child to then manipulate them), a criminal offence introduced by law 1 October 2012, which ratified and implemented the Lanzarote Convention in 2007. This is because the crime of child grooming only occurs when the conduct does not fall within the description of the crime-purpose even in its attempted form. On the distinction between grooming and violence, the Criminal Cassation ruled on a case of sexual violence against a minor, where the defendant invited the child on a walk along the river and promised them money. Among other things, the defence complained that the procedures suggested by the protocols of the Charter of Noto on listening to child victims of abuse had not been followed. The Court of Cassation underscored that wilful misconduct does not have to be directed solely towards the grooming of the child (including online or other digital means of communication), but it must have a specific end objective (art. 609-*undecies* of the Criminal Code) (see Court of Cassa-

tion, sec. III criminal, 23 April 2019, No. 17373). In that sense, regarding the relationship between child grooming and attempted sexual violence, due to a proviso foreseen by art. 609-*undecies* of the Criminal Code, the Court confirmed that the offence takes the form of child grooming only when the behaviour does not come under the definition of the crime at hand, even in its attempted form. It upheld that, where the offender's behaviour has gone as far as to explicitly offer and plan meetings aimed at sexualising the relationship with an under-fourteen-year-old, the offence of attempting a violation under art. 609-*quarter* now exists, as this has exceeded the limits of mere grooming (Criminal Cassation, sec. III, judgment 13 July 2020, No. 25431).

J Parental Responsibility: Automatic Suspension

The Constitutional Court (judgment 102/2020, 29 May 2020) had to address the question of constitutional legitimacy of articles 34 and 574-*bis* of the Criminal Code, in reference to articles 2, 3, 27(3), 30 and 31 of the Constitution, as well as art. 10 of the Constitution as regards the CRC. The set of criminal laws cited states that the sentence for the abduction and detention of a minor abroad by a parent automatically issues a pre-determined temporary additional penalty: the suspension of parent responsibility. The Grosseto District Court convicted a woman of repeatedly evading the Juvenile Court of Florence's judgment on the shared custody of the two children and of taking them to Austria against the father's wishes. After confirmation of the judgment of the Florence Court of Appeal, the woman decided to file an appeal with the Court of Cassation, raising the question of constitutional legitimacy of automated legal rulings on the subject of additional penalties. The judge emphasised that any provision that affects parental responsibilities must not contravene the prevailing need to protect the minor and evoked judgment No. 31/2012 (see *Yearbook 2013*, p. 333), which found art. 569 of the Criminal Code constitutionally illegitimate in the part in which laid out the automatic loss of parental responsibility, as in art. 574-*bis* of the Criminal Code, for violating art. 3 of the Constitution and of articles 2, 30 and 31 of the Constitution, as well as art. 3(1) CRC. Furthermore, automatically applying an additional sanction is contrary to the re-educational purpose of the punishment (especially if, as in the case in question, the crime was committed to protect the child from the father's conduct) and with the principles of proportionality and individualisation of the punishment. On the other hand, automatic proceedings are justified because they serve to immediately protect the child, and all restrictions are temporary. The Constitutional Court focused on art. 34 of the Criminal Code, which outlines the additional penalties of loss or suspension of parental responsibility, reiterating that they are only to be applied for crimes where it is expressly foreseen; and on art. 574-*bis* of the Criminal Code which penalises the removal or holding of a child abroad against the wishes of one or both parents (law 15 July 2009, No. 54). The duration of an additional penalty is equal to double the main sanction. According to the Constitutional Court, the problem lay in the "blindness" with regard to consequences: although it considers the intrinsically criminal nature of the offence, the automatic application of an additional penalty has a bearing *de jure* and *de facto* on the relationship with the child, and therefore affects a different person from the guilty party. This violates the principle of

individual criminal responsibility (art. 27(1) of the Constitution), as well as the general principle that every decision must be taken keeping the child's best interests in mind. Therefore, the Constitutional Court concluded by declaring the automatic application of suspension of parental responsibilities (provided for by art. 574-*bis*, para. 3 of the Criminal Code) contrary to the constitutional standards and the duties outlined in international and EU law on child protection. The current automatic procedure must be replaced with a case-by-case assessment by a criminal judge. The Criminal Cassation (sec. VI, judgment 14 September 2020, No. 29672) accepted the opinion of the Constitutional Court, confirmed the sentence and suspended the automatic interruption of parental responsibility.

K Reasonable Length of Proceedings

The remedy laid out within the "Pinto Act" (l. 89/2001), allowing a citizen to receive fair compensation for the excessive duration of their judicial proceedings, is only applied for jurisdictional proceedings and not administrative. The Bologna Court of Appeal doubted its constitutional legitimacy in reference to a specific administrative procedure: forced administrative management. In fact, this affects situations similar to bankruptcy proceedings, which are instead recognised as being judicial in nature. Therefore, this is a situation of unequal treatment between a creditor who participates in bankruptcy proceedings, who can obtain fair compensation under the Pinto Act in the event of excessive length of proceedings, and a creditor in a forced administrative liquidation proceeding, who has no remedy despite the facts of the circumstances overlapping. It seems to violate art. 13 ECHR (right to an effective remedy), pursuant to art. 117(1) of the Constitution, as well as art. 3 of the Constitution. The Constitutional Court (judgment 12/2020 of 5 February 2020) did not find that the constitutional or ECHR standards had been violated. It underscored the peculiar features of forced administrative liquidation, which is applied to companies that work in the private sector but in areas of strong public interest, such as credit or insurance companies, among others. This justifies the predominantly administrative nature of the procedure and the fact that the interests of private creditors come second to public interests. This administrative procedure is not subject to set limits of "reasonable" length (as opposed to jurisdictional proceedings), and therefore the Pinto Act is not applicable in these circumstances. According to the Constitutional Court, this is the case even if in the *Cipolletta v. Italy* case (see *Yearbook 2019*, p. 247) the ECtHR stated that forced administrative liquidation in that specific case presented characteristics that were substantially jurisdictional. In fact, this statement was made in reference to a specific incident and therefore cannot be generalised across this procedure.

In 2019, the Constitutional Court recognised the illegitimacy of the regulation making a prior acceleration request (in criminal proceedings) or a withdrawal request (in administrative proceedings) a condition of admissibility of a claim for compensation for excessive length of proceedings (see *Yearbook 2020*, p. 376). The District Court in Naples found that the same should be considered for the burden (laid down in l. 89/2001 as amended most recently in 2015) of pursuing "preventative remedies" when a civil procedure is close to exceeding a reasonable length, such as, for example, a request to move from an ordinary to a summary procedure, as a prerequisite to claim compensation. In these cases, the measures are purely formal and do not help to speed up the process, if only because its implementation depends on the choice of the judge. Therefore, the measures are in conflict with art. 6 ECHR, a provision imposed pursuant

to art. 117(1) of the Constitution. The Constitutional Court (judgment 121/2020 of 23 June 2020) did not agree with this interpretation and held that the current legislation was legitimate. The preventative remedies that a private party must pursue are to be understood as possible and concrete procedural models which are different from those used to ensure a reasonable duration. The applicant's request serves to demonstrate that the individual wishes to conclude the pending procedure in a reasonable time, without waiting for the right to compensation to mature. Therefore, it is not a mere formality, but collaborative behaviour which can legitimately be used as a prerequisite for the possibility of requesting fair compensation provided for by the Pinto Act.

The Constitutional Court (judgment 249/2020 of 25 November 2020) ruled that the 2012 law establishing that the initial start date from which to calculate a reasonable duration of proceeding is when the victim assumes the status of a civil party (art. 2, para. 2-*bis*, of law 89/2001, "Pinto Act") is contrary to art. 6 ECHR (and therefore violating art. 117(1) of the Constitution). The case which brought the question in front of the Constitutional Court concerned a complaint for harassment and injury, filed in 2012 (and reaffirmed in 2013 and 2015 due to the alleged inertia of the public prosecutor's office). However, this original complaint was not followed by the establishment of a civil party, which only occurred in 2018, the year in which the offended person was notified of the extinction of criminal liability due to prescription. The claim for fair compensation was dismissed given that, even though the alleged crime had been committed in 2012, the establishment of a civil party had taken place close to the date of prescription. In the opinion of the Court, which was based on the 2017 *Arnoldi* judgment of the ECtHR (see *Yearbook 2018*, p. 313), other actions which express the interest of the offended party to pursue the complaint should be considered as *dies a quo*. The Constitutional Court defended the current legal framework observing that the offended party is not always the same as the individual interested in establishing a civil party. The choice of the legislator to link any possible compensation for excessive duration of proceedings (including investigative phases) with the victim's establishment of a civil party is therefore reasonable and not arbitrary.

XIII Criminal Matters

A Suspension of Proceedings and Limitations caused by the COVID-19 Pandemic

The state of emergency caused by the COVID-19 pandemic had direct and severe consequences for the judiciary. In particular, art. 83 of l.d. 17 March 2020, No. 18 (and successive amendments), laid out the suspension of a series of ordinary activity of the criminal and civil courts from 9 March to 11 May, then extended to 30 June 2020 (in some cases, certain proceedings within that time before the Court of Cassation could have been suspended until 31 December 2020). The shut-down of all proceedings was considered the only measure capable of tackling the risk of contagion. In autumn 2020, with a rise of infections after the summer respite, the response was different: instead of suspending proceedings, the Courts expanded their use of video and telephonic technology for trials.

This suspension of proceedings was accompanied (in criminal matters) by another measure: the interruption of the statute of limitations of crimes.

This circumstance has raised more than a few questions, as it resulted in the retroactive application (that is, in relation to past conduct) of a criminal law that was unfavourable to the alleged offender. In Italian law, prescription has a substantial and not simply a procedural value: it annuls the crime, even though one of its functions is undoubtedly to favour the conclusion of the processes in a reasonable time. In ordering the suspension of judicial activities for a few months, art. 83 of l.d. 18/2020 also linked it with imposing a suspension of the time limit, thus introducing an unfavourable criminal law with retroactive effect, contrary to articles 25 and 117 of the Constitution, concerning the ban on retroactive criminal law as provided by art. 7 ECHR (described in art. 15 ECHR as non-derogable, or not susceptible of suspension even in cases of threatening the life of the nation). Various judgments of the Court of Cassation dismissed the question of incompatibility with the Constitution and the ECHR (Criminal Cassation, sec. III, judgments 2 July 2020, No. 21367 and 23 July 2020, No. 25433; sec. V, 14 July 2020, No. 25222). However, the legal basis and arguments for this rejection were not fully shared. The first judgment cited above lay the groundwork for the constitutional legitimacy of the provision imposing the suspension of the statute of limitations, with the legislator weighing up the right not to suffer the unfavourable effects of a retroactive regulation on the one hand, and the rights to life and health on the other. In this balance, the latter had been prioritised over the former. The other judgments instead based their legal standing on the norms set out in art. 83 on l.d. 18/2020 on art. 159 of the Criminal Procedures Code, which establishes that legal causes can suspend ongoing proceedings. Since the statute of limitations is closely linked to the progress of the criminal proceedings, art. 159 of the Criminal Procedures Code may constitute the pre-existing legislative provision that rules out the retroactive nature of the 2020 law. This interpretation was followed by the Constitutional Court in judgment 23 December 2020, No. 278. In particular, the Court ruled out that a balance can be made between the right to health and the principle of non-retroactivity *in peius* of criminal law. The latter is a fundamental value that must remain outside the debate on balancing rights. Suspending legal proceedings (generally established in art. 159 of the Criminal Procedures Code and further developed in art. 83 of l.d. 18/2020) also brings with it the suspension of the statute of limitations. The latter can never be abstractly determined, but instead in relation to the criminal proceedings. Therefore, it follows that once the process is suspended by law, the statute of limitations also stops for a fixed period.

B Retroactive Application of Unfavourable Laws: Strict Prison Regime for Crimes against Public Administration

Law 9 January 2019, No. 3 (Measures on combating crime against public administration, the so-called "bribe-destroyer law" (*legge spazzacorrotti*) with art. 1, para. 6, letter b), introduced prison charges for a series of crimes related to corruption in public administration which foresaw the application of the strict prison regime defined by art. 4-*bis* of the Prison Law to offenders. This regime ruled out the possibility for offender to access measures that mitigate the punitive scope of the sentence, such as temporary release, conditional release,

bonus permits, outside-prison work, or even a conditional suspended sentence. These can only be overcome if the offender "collaborates" with the law, doing everything possible to prevent criminal activity from further continuing and assisting in the collection of evidence to prevent crimes, identify other culprits, and recover stolen assets. These are regulations that are typically applied to members of organised crime (such as the mafia) or terrorist organisations. The law did not provide for any transitional regime: consequently, according to the prevailing interpretation given by Italian jurisprudence and legal framework, the new regime applied both to those sentenced after the law came into force and to offenders who had already been sentenced and who, even in the absence of "collaboration", had generally benefited from the provisions of the "bribe -destroyer law". The regulations on the execution of a sentence are considered unrelated to the subject of "substantial" criminal law and are therefore not covered by the principle of non-retroactivity of the criminal law established by art. 25(2) of the Constitution and art. 7 ECHR. Like "procedural" norms, they are applied uniformly to all offenders serving their sentence, regardless of the fact that the regime was different at the time in which the crime was committed or the sentence was defined. Many judges have brought up the question of constitutional legitimacy of art. 1 of l. 3/2019, complaining that it radically changed the prison regime for offenders sentenced for the crimes in question, as before the reform they could serve most of their sentence outside prison and that based on their defence strategy during legal proceedings, they had the opportunity to earn a conditional suspended sentence, temporary release or other benefits. The Constitutional Court (judgment 32/2020 of 26 February 2020), while acknowledging that the execution of the sentence is generally not subject to the strict principle of legality established by art. 25(2) of the Constitution, referring to recent ECHR case law, recognizes that a profound, "unfavourable" change in the nature of the prison regime associated with certain crimes, that transforms a sentence that could have been atonable "outside" prison into a sentence to be served essentially "inside" prison, cannot be applied retroactively. The same benefits (bonus permits, work outside, among others) that depended on the previous conduct of the prisoner cannot be removed by adopting a stricter prison regime without denying the rehabilitative and rehabilitative value of these measures. In conclusion, the law introducing the strict prison regime for crimes against the public administration cannot be applied to offenders who committed a crime before the entry into force of l. 3/2019.

Judgment 32/2020 ordered that the constitutional questions that arose with respect to the "bribe-destroyer law" be reconsidered by other courts – hence the referral of the acts ordered by the Constitutional Court judgments 183/2020 and 184/2020 of 30 July 2020. The principle elaborated by the major judgment 32/2020 (that extended the rule of non-retroactivity to laws of a "procedural" nature when they introduce significantly worse conditions for the offender and which substantially change the type of sanction applicable), was implemented in judgment 193/2020 of 31 July 2020. In this case, a 2015 law extended (de facto retroactively) the prohibition to order a conditional suspended sentence for the crime, placing it within the strict prison regime offences referred to in art. 4-*bis*, l. 354/1975 to the crime of aiding and abetting illegal immigration. According to the new letter laid out by the Constitutional Court, placing this offence among those under the strict prison regime cannot relate to conduct prior to the entry into force of the law introducing pejorative treatment.

A similar issue was brought in front of the Constitutional Court in judgment 3 December 2020, No. 360. The law 12 April 2019, No. 33 introduced paragraph 1-*bis* to art. 438 of the Criminal Procedures Code, which provides that the abbreviated procedure is not allowed for crimes punishable by life imprisonment. One consequence of this law is that if the offender is found to be criminally responsible, receiving a thirty-year prison sentence rather than life imprisonment is no longer possible. The option of an abbreviated procedure was introduced in the 1990s. Some judges raised the doubt that the new, more strict law retroactively affected the situation of some offenders serving sentences for murder (in this case, feminicides – a crime punishable by a life sentence), if the unlawful conduct had occurred before the reform came into force, but the event of the victim's death had occurred later. The Constitutional Court ruled out that this was the effect of the new art. 438, para. 1-*bis*, as it was a peaceful interpretative rule that, in offences consisting of conduct and event, the time that the crime was committed (in order to apply the procedural rule) is when unlawful action or omission took place, not the consequential event. The new regime preventing abbreviated procedures and therefore the replacement of the life sentence with a thirty-year sentence can only be applied to conduct following 20 April 2019. Other complaints focused on the discriminatory and unreasonable nature of the reform (art. 3 of the Constitution), that it limits the options available to the defence (allegedly in breach of art. 24 of the Constitution) and that the ordinary procedure entails lengthening the time of legal proceedings, which could potentially violate the principle of a fair trial (art. 111 of the Constitution). All these complaints were dismissed by the Constitutional Court, recognising the full power of the legislator to make the procedural regime stricter (and therefore indirectly, also the applicable punishments) for crimes to which a maximum sentence can be given. The fact that these crimes include, for example, murder committed by mafia organisations, which some may consider of greater social gravity than other offences, does not diminish the reasonableness and consistency of the challenged law.

C Associations with Terrorist Aims and Compulsory Prison Custody

The Turin Court of Assizes doubted the constitutional legitimacy of art. 275, para. 3 of the Criminal Procedures Code, which states that "where there are serious indications of guilt in relation to the crimes referred to in articles 270, 270-bis and 416-bis of the Criminal Code, pre-trial detention in prison can be applied, unless there are elements that prove the lack of precautionary need". The crimes referred to in the law are: Mafia-like association, also foreign (416-*bis)*; subversive association (art. 270); and association for the purpose of domestic or international terrorism (art. 270-*bis*). Various other crimes were originally covered by this law; however, automatic detention has been progressively ruled out by the Parliament or through Constitutional Court interventions. On the other hand, the Constitutional Court has repeatedly confirmed the reasonableness and proportionality of the rule with respect to mafia associations (art. 416-*bis*), although ruling out the automatic nature of the law provision in reference to crimes committed with "the mafia method" or aiming to facilitate mafia organisations (see *Yearbook 2014*, p. 314). Before 2020, the Court had not ruled on terrorism or subversion-related crimes (art. 270-*bis*). With judgment 191/2020 of 31 July 2020, the Court upheld the legitimacy of the challenged law. Similarly to the provisions regarding mafia association, adhering to a terrorist organisation implies a particularly intense form of support for a criminal organisation which would be difficult

to combat with any precautionary measures other than pre-trial detention, especially considering the fluid, interconnected nature of modern terrorist organisations. The law that renders compulsory the incarceration of a terrorist suspect – in the presence of serious indications of criminal responsibility – therefore does not violate articles 3, 13 and 27 of the Constitution.

D Compensation to Victims of Intentional Violent Crimes

Directive 2004/80/EC obliged all Member States to establish mechanisms to guarantee fair and appropriate compensation to victims of violent crimes, requiring the Member State to ensure that compensation is paid if the offender is unable to satisfy a judgment on damages. Italy failed to implement this directive fully and within the appropriate time, transcribing into national legislation with law 122/2016 after an infringement procedure had been opened against Italy regarding this issue (see *Yearbook 2018*, p. 270). The same 2016 law was further amended in the following years to better align it with this Directive. The Court of Cassation intervened in a case connected with doubts about the correct interpretation of this law. The case concerned an Italian citizen (with Romanian origins) who in October 2005 was the victim of rape by two Romanian citizens. The men were tried and convicted in the first instance in 2010, sentenced to ten years in prison for sexual assault. However, the two absconded, making any compensation impossible. The woman's compensation claims (based on the EU directive) were ignored, initially due to the delay of the Italian State in transposing the EU law, then due to the limitations presented in law 122/2016 and the interpretation of the Italian courts, on which the CJEU was called to rule. The Civil Cassation (sec. 3, judgment 24 November 2020, No. 26757), finally delivering its judgment after the CJEU had been able to express itself on the point of law, firstly stated that, on the strength of retroactive effects recognised by retroactive effects recognised in the 2016 law by amendments introduced in laws 167/2017 and 145/2018, the woman's compensation claim (directed at the Italian State) was justified – in fact, the woman had received compensation of €25,000 in 2019. However, her right to claim compensation for damages due to the failure of the State to transpose the 2004 Directive into Italian law within the correct time had not been recognised. The judgment clarified that, in light of various CJEU rulings, the failure to correctly transpose the Directive relating to compensation to crime victims within the specified time period constitutes an illegal act that the Italian State must remedy on an equitable basis (given that it is a non-pecuniary damage for violating fundamental rights, which are unquantifiable in precise economic terms). This compensation is added to the specific sum provided for by l. 122/2016, taking the total amount that the State owed the crime victim to €50,000, including the 2019 instalment (plus interest). This amount was the same sum as had been ordered during the appeal proceedings in 2012, which had reduced the sum from the €90,000 that was defined by the first instance court.

E Compensation for Inhumane Detention Conditions

In a range of judgments, the Court of Criminal Cassation clarified the conditions which justify the awarding of compensation to detainees for inhuman or degrading treatment,

in violation of art. 3 ECHR, pursuant to art. 35-*ter* of law 354/1975 (Prison Administration Act).

In Criminal Cassation, sec. I, judgment 23 January 2020, No. 14258, the Supreme Court ruled that a water leak in a prisoner's cell that caused a part of the ceiling to fall onto his bed (which happened periodically during the five months, during which he requested to be transferred to another single cell) could not be considered an inhumane or degrading treatment. In their opinion, it should be considered a situation of "discomfort" which did not exceed the limit of severity and intolerance that would allow for a claim for compensation. Similarly, Criminal Cassation, sec. V, judgment 15 June 2020, No. 23110, ruled that the situation of a prisoner detained in the 41-*bis* regime of l. 354/1975 to receive only one hour of fresh air a day instead of the two expected for a certain period of time again did not exceed the threshold of "discomfort". Once more concerning a prisoner detained in the 41-*bis* regime, the Court of Cassation quashed the decision of the District Court which had dismissed a claim for compensation only considering the square metreage of the applicant's cell, which was over the three-metre-squared per person limit. However, it did not take other elements into account, such as lack of adequate lighting, failures in sanitary services, and lack of proper air ventilation. Effectively, the problem of over-crowding does not arise for detainees held under the special prison regime, given that they are almost exclusively placed in single cells. It is for this reason, and because inmates will spend 22 hours a day in the cells, that due care must be given to other standards, such as those that were brought up in the present case (Criminal Cassation, sec. I, judgment 11 September 2020, No. 30030).

Recognising the right to compensation for inhuman and degrading treatment cannot be ruled out due to a lack of a link between the serious psychological distress of an inmate (who had also attempted suicide) and the health and hygiene conditions of the prison environment (recognised as being sub-optimal). In the event of a mental vulnerability situation, the most important factor is the availability of medical and healthcare care, which in the present case were sorely lacking. In this case, the parole officer had focused exclusively on logistic shortfalls (Criminal Cassation, sec. I, judgment 12 February 2021, No. 17655).

The Court of Criminal Cassation (sec. V, judgment 8 June 2020, No. 18328) recognised that it is the duty of the judge to obtain appropriate evidence to verify the applicant's accusations regarding inhuman detention conditions in the event that the prison institution declares itself unable to provide useful information. An inmate had filed a compensation claim under art. 35-*bis* with respect to a period of detention in 1995-1996. The prison responded to the claim by communicating that it was unable to provide the documentation necessary to support or refute the applicant's accusations, since the paper documents could not be found and at that time no documents were filed digitally. On two occasions, the judges concluded that the prisoner had not demonstrated the inhuman conditions of detention that he had claimed. The Court of Cassation contradicted this decision, stating that in these situations, it was the duty of the judicial authority to find a way to obtain the prison institution evidence elsewhere, and that, in absence of evidence to the contrary, it must be assumed that the prisoner's account of facts is accurate.

The judgment of the Court of Cassation, Joint Sections, judgment 24 September 2021, No. 6551 is particularly significant, with which the Joint Sections ruled on various issues arising with regard to the criteria used to define the minimum space necessary for the inside of a cell. The main question concerns

whether the space that is taken up by furniture (apart from bunk beds or bathroom furniture) should be included in the dimensions of the cell, which, to stay above the minimum standard established for overcrowding, has been measured at least three-square metres per person. Anything below this standard would be considered inhuman and degrading treatment. In the opinion of some judges, tables, chairs, and similar furniture (including a single bed) take away space that the detainee can enjoy, whereas the prison administration maintains that this furniture is used to make the cell more liveable, and therefore do not reduce the available space. It is a clear reference to the consolidated case law of the ECtHR, pursuant to art. 35-*ter* of the Penitentiary Law. The Court of Cassation summarised the indications of the ECtHR on the issue. The three-metre usable floor space is identified taking away the sanitary facilities but including furniture, with no distinction on its use; the assessment of possible free circulation within a cell must uncoupled from a measurement of a pure square metreage and instead should be an empirical judgment released by the judge after a careful examination of the case at hand. When the floor space of a cell is smaller than three metres squared per capita, there is most likely a violation of art. 3 ECHR, although a State may be able to justify this lack of space with other compensatory factors; if, however, the space per person measures from three- to four-metres squared and other unsuitable or inadequate factors exist (for example, poor lighting or air circulation), the situation is deemed to violate art. 3 ECHR; finally, if the floor space for each individual is bigger than four metres squared, the factor of personal space is not used for the purpose of establishing a violation of art. 3 ECHR, and other elements (health risks, lack of water or hot water, etc.) must come into play. Compensatory factors that allow for a smaller cell may include: a short length of detention; sufficient freedom of movement outside the cell ensured by adequate activities; the existence of dignified prison conditions in general. Furthermore, the Court of Cassation observed that the standards established by the ECtHR also apply to EU law (therefore, they apply when executing a European Arrest Warrant). Moreover, these are not only minimum standards, but also maximum limits, as it would be unacceptable for a State to establish more "generous" norms.

The Court of Cassation (sec. V, judgment 4 November 2020, No. 1995) resolved another problematic case: the detainee had filed for compensation with the supervisory magistrate pursuant to art. 35-*bis* in the form of a reduction in his sentence while still in prison. However, two years later, the case had still not been ruled upon, and in the meantime he had served his sentence. Consequently, the applicant faced the prospect of starting the whole procedure again from scratch, this time filing for a monetary compensation, in front of the District Court and not the parole officer, with inevitable inconvenience and further delays. The Court of Cassation, to maintain the direct and immediate nature that should have characterised this case, concluded that in this situation it was the responsibility of the supervisory court to amend the applicant's request of its own motion, from early release to pecuniary compensation.

F Prisoners under the Special Prison Regime (Art. 41-*bis* of the Prison Administration Act)

The state of emergency due to the COVID-19 pandemic had a significant impact on the Italian prison system. The so-called "prison release decree" (*decreto scarcerazioni,* l.d. 30 April 2020, No. 28, converted with amendments in l. 25 June 2020, No. 70) introduced the possibility of release of prisoners to minimise the risk of contagion within prisons. This possibility was also extended to high-risk prisoners subjected to detention under the special prison regime (art. 41-*bis*), although in their case, their house arrest was subject to strict limitations. In particular, once these provisions were set out by the supervisory magistrate, they should have been regularly reassessed by the same magistrate on the basis of opinions provided by the district public prosecutor's office and the national anti-mafia public prosecutor's office, as well as information from the Department of Prison Administration, which must notify the magistrate of any space that opened up in internal prison healthcare structures. The regulation was brought in front of the Constitutional Court (judgment 24 November 2020, No. 245) as an issue regarding the right to health (art. 32 of the Constitution) and of the right to a defence (art. 24 of the Constitution). The right to a defence seems to be compromised due to the "in the dark" nature of the proceedings during which the parole officer gathers information from the relevant authorities, including the compulsory opinion of the prosecutor. The Constitutional Court observed that, in reality, the defence can present testimonies and documentation, even if in a previous phase, important information was not known to the detainee or the defence. In the event that the supervisory magistrate orders that the house arrest be revoked, the decision takes place with a fully reconstituted cross-examination. Concerning art. 32 of the Constitution, the Constitutional Court worked out a balance between the prisoner's right to health and the need to protect public security, acknowledging that the solution found by the law is balanced.

The special prison regime laid out in art. 41-*bis* of law 354/1975 (Prison Administration Act) is applicable to persons convicted for mafia-associated crimes: these strictly exclude these prisoners from communicating in any way with other detainees, as well as with regard to the environment outside the prison, as it could potentially compromise order and security. This justifies the failure to deliver a registered letter addressed to the detainee but with no written sender information (Criminal Cassation, sec. I, judgment 11 February 2020, No. 15624). However, saying goodnight or marking the start of a meal to other detainees does not constitute a form of "communication" and therefore the sanction given to a prisoner held under the special regime who had addressed similar greetings to other groups of detainees should be overturned (Criminal Cassation, sec. I, judgment 16 January 2020, No. 16244; sec. VII, judgment 24 January 2020, No. 18639). Blocking the sending of telegrams containing greetings and good wishes by a prisoner held under the special regime and other detainees in similar regimes is legitimate, as the greetings could contain hidden communications (Criminal Cassation, sec. I, 8 October 2020, No. 469). The special regime was used to justify a prison regulation which would not allow detainees under the special prison regime to buy or cook foods outside of certain schedules which other inmates were allowed to get. The ban was justified in order to stop mafia-related prisoners from showing off their charisma or criminal "prestige" through the consumption of certain foods (Criminal Cassation,

sec. I, 4 December 2020, No. 4030). According to the Court of Cassation, the regulation that imposed a thirty-day interval between in-person visits of telephone calls with family members is fully legitimate, in order to balance the right to maintain family relationships and the organisational needs of the prison, which has the duty to ensure an effective and secure institution (Criminal Cassation, sec. I, judgment 26 June 2020, No. 23945). According to the Constitutional Court, art. 41-*bis*, para. 2-*quater*, letter f) is contrary to art. 3 of the Constitution, insofar as it not only imposes the absolute prohibition of communicating and exchanging objects between prisoners belonging to different groups, but also prohibits the exchange of "modest value" objects among prisoners belonging to the same group. In fact, the latter have already had ample opportunity to interact and therefore do not have to resort to tricks such as exchanging objects to communicate among themselves (Constitutional Court, judgment 22 May 2020, No. 97).

G Criminal Character of AGCOM Sanctions

The sanctions that AGCOM can issue against radio and television broadcasting stations that do not respect the ban on transmitting scenes that could be harmful to minors (the present case concerns the State broadcasting channels RAI) are substantially criminal in character. When a private user reports a programme for violating these norms, rather than the local police or other competent agencies, AGCOM must produce a deliberation foreseeing that the sanction can be imposed by the Guarantee and Litigation Office only following an examination by the AGCOM Department of Surveillance and Control. The failure to involve these internal subjects constitutes a procedural failure which makes the sanction issued illegitimate, as it is contrary to the principle of the right to a fair trial pursuant to art. 6 ECHR. Despite the fact that it is substantially criminal in nature according to the ECtHR case law, the AGCOM can issue financial sanctions to television broadcasters, as this procedure is sufficiently respectful of procedural principles. However, this is under the condition that all the steps laid down are meticulously observed, including (in the case in question), the step of passing the report to be examined by the Department of Surveillance and Control (Council of State, sec. VI, judgment 28 December 2020, No. 8391).

H Confiscation and Seizure

On confiscation and seizure, the Council of State (sec. III, judgment 10 December 2020, No. 7866) notes that the lack of a failure to allocate a social purpose of possessions confiscated as part of mafia proceedings does not entail the revocation of these provisions, nor does it make it possible to suspend them. This is the case even if the procedure which ordered the seizure is challenged in front of the ECtHR for a violation of art. 6 ECHR on the right to a fair trial. The Italian Supreme Administrative Court noted that a pending appeal in front of the ECtHR does not make it a legal duty for the Italian court to suspend the effects of the confiscation, also taking into consideration the fact that Court of Strasbourg proceedings can take many years. Furthermore, the ECtHR case law had already recognised the legitimacy of seizures as an anti-mafia prevention measure, on a par with the ECHR.

I Extradition

The Court of Cassation (Criminal Cassation, sec. VI, judgment 27 October 2020, No. 30007) acknowledges that the lack of reliable information on the COVID-19 pandemic in Peru and the way that the country's prisons were equipped to deal with the problem

justifies the suspension of the Peruvian extradition, who had been accused of aggravated robbery. It is legal to extradite a person to Israel to serve a sentence for common offences, even if trusted sources have documented inhuman and degrading practices against Palestinian detainees in State prisons, but only regarding crimes of terrorism (Criminal Cassation, sec. VI, judgment 25 June 2020, No. 19390). A prisoner's extradition to Russia to do "forced labour" was suspended by the Court of Cassation pending verification as to whether this type of punishment violates the fundamental rights of the person, or whether it actually aims at reintegrating the person into society and does not exploit the person or their labour (Criminal Cassation, sec. VI, judgment 30 January 2020, No. 8616). The fact that this crime could in theory be punished with the death penalty in Russia does not exclude the extradition of the convicted person, as the Russian Criminal Code expressly prohibits the death penalty for extradited criminals if that punishment is banned by the extraditing State (Criminal Cassation, sec. VI, judgment 10 March 2020, No. 11374). Furthermore, it is the duty of the Italian Court (as the extraditing State) to acquire detailed information on the risk of mistreatment related to prison overcrowding in Moldova integrating information taken from UN treaty bodies reports, the Council of Europe and other international organisations. It is also the duty of the judge to decide whether to proceed with an extradition of a person to a country only if the information collected excludes all risk of inhumane treatment (Criminal Cassation, sec. VI, judgment 23 July 2020, No. 22818). Information collected from the extradited person on inhumane and degrading detention conditions in the receiving State cannot be generic or outdated data (all information received by the requesting State relating to detention conditions of the extradited person must be given during a hearing to be discussed and commented on by the extradited person's defence, on penalty of becoming inadmissible (Criminal Cassation, sec. VI, judgment 26 October 2020, No. 29860). Extradition can be denied if the punishment to be served in the requesting country would be unreasonable and completely disproportionate. This is not the case of a one-year prison sentence established by an Albanian Court for Infringement of local building regulations (Criminal Cassation, sec. VI, judgment 3 March 2020, No. 9203). According to the Court of Cassation, if a wanted person has presented an application for international protection in Italy, this does not preclude the possibility of continuing with the extradition. However, a refusal for extradition can be based on the eventual recognition of the person's international protection status (Criminal Cassation, sec. VI, judgment 10 March 2020). If a person has a subsidiary protection status in Italy, extradition to Kosovo can be refused. However, in the case in question, subsidiary protection had been requested by the person escaping from retaliation of the family members of a person he had killed. The request had been denied and, therefore, the extradition was held to be legitimate (Criminal Cassation, sec. VI, judgment 26 June 2020, No. 19392). The common practice of *"Kanun"* (blood feud) is not a sufficient reason to deny the extradition of a convicted person to that country, as it does not constitute a State choice but a private tradition which cannot prevent cooperation among States; furthermore, all information received by the requesting State in relation to the detention conditions of the extradited person must be presented in a hearing in order for the defence to discuss and comment on it, on penalty of becoming inadmissible (Criminal Cassation, sec. VI, judgment 18 September 2020, No. 30884). It is legal to extradite a person who has been sentenced by default judgment to Albania, as the Albanian legal system lays out a procedure to renew this sentence; furthermore, the default judgment was given with the consent of the defendant, as represented by his legal aid (Criminal Cassation, sec. VI, judgment 4 June 2020, No. 18831). It is not necessary to respect the principle of non-retroactivity,

as the double criminality requirement remains in effect (a person can only be extradited for an act that also constitutes a crime under Italian law): it is, however, important that this double criminality exists when deciding the outcome of an extradition hearing, not when the crime was allegedly committed (Criminal Cassation, sec. VI, judgment 4 June 2020, No. 18830). The other underlying fundamental principle of this issue is speciality: the person cannot be detained for any offence committed before their surrender other than the offence for which extradition was granted. However, according to the 1957 European Convention on Extradition, if the extradited person, having had an opportunity to leave the territory of the Party to which they have been surrendered, has not done so within 45 days of their final discharge, the State may arrest the person for any offence committed prior to their surrender other than that for which they were extradited (Criminal Cassation, sec. VI, judgment 23 June 2020, No. 20987). Extradition cannot take place if the person has already served their full sentence in custody for the same crime in Italy, as it would be paramount to serving a double sentence (Criminal Cassation, sec. VI, judgment 18 June 2020, No. 22257).

The Court of Cassation (Criminal Cassation, sec. VI, judgment 14 January 2020, No. 14428) does not consider the fact that the extradited person was a father with three children as a justification to reject an extradition request, as in this circumstance, the children were able to stay with their mother.

On executing a European Arrest Warrant order, the surrender of the person can be delayed until after a sentence given for a separate crime has been fully served, if the Court believes that it is the interests of the convicted person to serve their sentence in Italy instead of the requesting State. This is irrespective of the person's danger to society, which this kind of assessment does not disclose (Criminal Cassation, sec. VI, judgment 30 January 2020, No. 4534).

Italy in the Case Law of the European Court of Human Rights*

I Right to Life, Ban on Torture and Inhuman and Degrading Treatment

In the *N.C.* case (No. 37926/16) with the judgment of 5 March 2020, the ECtHR struck the case out of its list pursuant to art. 37 ECHR as the applicant – complaining of a violation of his right to life as of art. 2 ECHR due to excessive length of civil proceedings for damages – declared that he no longer intended to keep the case going in front of the Court as he had come to an agreement with the Government.

In the *Fabris and Parziale* case (No. 41603/13), on 19 March 2020, the ECtHR ruled on a case of suicide of a detainee. Since the age of sixteen, the deceased had used drugs and alcohol, and in 2004, the date of his last arrest, the man already presented various physical and mental disorders related to his prolonged use of psychotics. His medical records described him as a person who "seeks out, whenever possible, substances that will get him high", but with no suicidal tendencies. On 12 May 2005, he was caught inhaling gas from a canister used by inmates for cooking food. Despite this episode, the Prison Disciplinary Board accepted the prisoner's justification that he had not tried to inhale the gas, but rather opened the gas valve with his teeth, since he had a fractured arm at the time. On 30 May 2005, the prisoner was found dead in his cell. The initial autopsy found some body injuries that were declared compatible with electrocution. Based on this report, the preliminary investigation judge commenced criminal proceedings against unknown persons, and in 2006, the public prosecutor ordered another autopsy to confirm the presence of injuries compatible with electric shocks. This second autopsy excluded electric shock injuries and maintained that the probable cause of death was deliberate gas inhalation. In 2012, the public prosecutor applied to close the case, not only due to the fact that the case had become time-barred, but also because of the impossibility to attribute responsibility for the deliberate inhalation of gas supplied by the prison to any one of the Venice prison director, the senior doctor or the head of prison services.

With regard to the admissibility of the complaint, the Court did not automatically recognise the victim status of the cousin of the deceased pursuant to art. 34 ECHR, due to lack of legitimate interest. Regarding the exhaustion of domestic remedies, pursuant to art. 35 ECHR, the Court recognised that

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while no civil proceedings had been commenced, the applicant (the uncle of the deceased) had participated in the criminal proceedings commenced by the investigating judge to establish the facts surrounding the suicide. The Court recalled that "if a person has multiple domestic complaint procedures at their disposal, that person has the right, having exhausted all domestic remedies, to choose one in which to pursue their principal complaint".

As regards the merit of the case, the Court considered whether the Italian authorities had adopted all precautionary measures to protect the safety of the prisoner from others or from himself, having evaluated whether there is a real or immediate danger to the life of the person (*Mastromatteo v. Italy* [GC], No. 37703/97, 24 October 2002; *Keenan v. United Kingdom*, No. 27229/95, 3 April 2001; *Fernandes de Oliveira v. Portugal* [GC], No. 78103/14, 31 January 2019). The Court concluded that the detainee had most likely died after an improper use of gas from a canister, which he had obtained in a regular manner. The ECtHR added that, as can be seen from the deceased's medical records and prison disciplinary records, the authorities were aware of the deceased's addictions and that these habits made him a vulnerable subject. However, the Court noted that the deceased had been constantly supervised by medical staff and was undergoing both pharmacological and psychological detoxification treatment, during which the Italian authorities were safely administering medication and that his canister gas inhalation levels had always been comparable to that of the other prisoners. Given these circumstances, the Court ruled that it had not been established that the Italian authorities should have known that there was a real and immediate danger to the deceased's life. Furthermore, the Court considered that excessive limits on an individual's autonomy for no justifiable reason can be incompatible with articles 3, 5 and 8 ECHR.

Regarding the procedural aspect of the obligation to conduct an "official and effective investigation" to establish the circumstances of the events and identify the responsible (where possible), the Court assessed whether the investigations had been carried out with reasonable dispatch (*Mustafa Tunç and Fecire Tunç v. Turkey* [GC], No. 24014/05, 14 April 2015; *Troubnikov v. Russia*, No. 49790/99, 5 July 2005) as required by art. 2 ECHR to "maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts" (*Armani Da Silva v. United Kingdom* [GC], No. 5878/08, 30 March 2016). The Court identified an issue in the length of the investigation (seven years and seven months in total), above all in its final phases, and took note of the conclusion of the proceedings due to the prescription of the events. However, at the same time, the Court noted that the dismissal judgment reveals no negligence or gaps in the investigation and that therefore there had not been a violation of the procedural aspect of art. 2 ECHR. Consequently, the ECtHR unanimously concluded that there had been no violation, neither substantial nor procedural, of art. 2 ECHR.

In the *Berlioz* case (No. 11137/13) with the judgment of 24 March 2020, the ECtHR ruled on the alleged violation of the prohibition of being subject to torture, or inhuman or degrading treatment or punishments pursuant to art. 3 ECHR. The applicant, in prison for murder, kidnapping and aggravated

robbery, declared that he had not received necessary medical treatment or an adequate diet for his coeliac disease and that he had been put in daytime isolation, despite his critical health condition. The Court accepted the Government's argument that the applicant had not exhausted all domestic remedies, noting that he had not presented an appeal in cassation against the judgment of the Florence Court of Appeal that had dismissed his request to suspend the sentence or convert his sentence into house arrest on the basis that the applicant's health was incompatible with a prison sentence. Regarding the daytime isolation, the Court recalls that, in light of its own case law, isolation does not, in itself, constitute inhuman or degrading treatment (Öcalan *v. Turkey*[GC], n- 46221/99, 12 June 2005), but that, given that it is an exceptional measure, it is necessary to assess whether it falls within the remit of the application of art. 3 ECHR, the specific conditions of the case, the severity of the measure, its duration and the reason for applying the measure (*Van der Ven v. The Netherlands*, No. 50901/99, 4 February 2003; *Piechowicz v. Poland*, No. 20071/07, 17 April 2012). In this context, within the present case, the Court observed that the isolation had only last one month and had then been suspended by his attending a physician and that the applicant had received all necessary medical treatments. Consequently, the Court concluded that the daytime isolation did not meet the minimum level of severity which would bring it within the scope of art. 3 ECHR (*Genovese v. Italy,* No. 24407/03, 10 November 2009). The Court declared the case inadmissible pursuant to art. 35 ECHR on the grounds that it was manifestly ill-founded.

In the *Citraro and Molino* case (No. 50988/13, judgment of 4 June 2020), the applicants complained of a violation of articles 2 and 3 ECHR. The case revolved around the suicide of the son of the applicants, while serving his sentence in the prison of Augusta. In 1995, the son was diagnosed with some mental disturbances, which, however, were not considered incompatible with his prison detention. Between 1995 and 1999, the man was admitted to a psychiatric hospital on various occasions, and in 1999, after a monitoring period at a high-security psychiatric hospital, he was transferred to prison where, in 2000, he started to self-harm and attempted suicide. In September 2000, he was moved to Messina to take part in hearings for a trial. From January 2001 onwards, the detainee demonstrated anti-social and self-harming behaviour. He underwent psychiatric visits on the basis of which frequent interval surveillance was arranged. Following his refusal to receive his prescribed pharmaceutical treatment, he was subjected to a 'high-risk suicide watch' warning, later revoked with an improvement in his condition, and substituted with 'medium-risk suicide watch'. On 9 January, the prison director requested his transfer to a high-security psychiatric unit, for the maximum possible duration (30 days). From 13 to 15 January, the man barricaded himself inside his cell, smashed the lights, and demanded to speak to his lawyer. This meeting then took place on 15 January; following this, the prisoner took down the barricades to his cell. On 16 January, at 7pm, the prisoner was found lifeless in his cell. In the aftermath of this incident, a criminal procedure was opened to determine whether the prison director, the psychiatrist, and the six prison guards were responsible for the death. Following these investigations, the prison director and one guard were charged, accused of not preventing suicide, and the other three guards for assisting the director

to withhold video surveillance footage of the prison corridor, thus perverting the course of justice. In 2007, while expressing some doubts about the prison director's behaviour, the District Court in Messina acquitted all defendants, stating that none of them had committed a crime and that suicide was unforeseeable. In front of the ECtHR, the applicants argued that while fully aware of their son's mental state, the Italian authorities had not taken the necessary or adequate steps to prevent his suicide. The Court upheld that the Italian authorities were aware of the state of health of the detainee and the real and immediate risk of suicide, bearing in mind the progressing deterioration of his condition since his arrival at the District Court in Messina (*Keenan v. United Kingdom*, No. 27229/95, 3 April 2001; *Ketreb v. France*, No. 38447/09, 19 July 2012). Therefore, the Court ruled that it was necessary to assess whether the authorities had taken all possible measures that could reasonably have been expected to stop this real and immediate danger from becoming a reality (*Isenc v. France*, No. 58828/13, 4 February 2016). In this regard, the Court noted that the Italian authorities had taken steps to protect the life of the prisoner, but nevertheless there had been a lack of due diligence. In the Court's opinion, this lack of due diligence was demonstrated in the excessive delay (10 days) in transferring the prisoner to a high-security psychiatric hospital and the loosening of his surveillance (from 'high-risk suicide watch' to 'medium-risk suicide watch' with blinds open) given the clear deterioration of his condition (barricading himself inside his cell and destroying the furniture and lights). Therefore, the Court concluded that there had been a violation of art. 2 ECHR, as the Italian authorities had not taken all the steps that could reasonably be expected to protect the integrity of the detainee. Regarding the investigation by the Italian authorities to determine whether the prison staff members were in any way responsible, the Court found that the Italian authorities had carried out an effective investigation (*Mustafa Tunç and Fecire Tunç v. Turkey* [GC], No. 24014/05, 14 April 2015) based on a careful examination of all evidence (including witness testimony, video recordings, documental evidence, and inspections) to determine the facts of the case. Therefore, the Court found that there had been no violation of the procedural aspect of art. 2 ECHR. Therefore, the Italian Government was ordered to pay 32,000 euros in compensation in respect of non-pecuniary damage and 9,000 euros for costs and legal expenses.

On 25 June 2020, the ECtHR declared the *Scoppola* case (No. 31116/13) inadmissible according to art. 37 ECHR, as the applicant had passed away and no close family members wished to continue pursuing the case. On 25 June 2020, the ECtHR struck out from the list the *Tesfagabry Yosiof and others* case (No. 295/18) pursuant to art. 37 para. 1 letter a. The applicant, representing her two children, complained of the removal and successive adoption of her son. The Court found that the applicant no longer wished to pursue the case before the Court, given that her legal representative had heard no further news from the her.

In the *M.D.* case (No. 18530/16) the applicant complained of the excessive length of the procedure to compensate her husband's post-transfusion infection – the man in the meantime had died. The Court (with decision of 3 September 2020) decided to strike out the case from the list pursuant to art.

37 para. 1 letter a. From the circumstances of the case, it could be concluded that the applicant no longer wanted to pursue the case, as there was no response to letters sent by the ECtHR inviting her to respond to the Government's observations on the admissibility and merits of the case.

The ECtHR decided to strike out the *A.M.* case (No. 29855/17) from its list with a decision of 15 September 2020. The case concerned the risk of being exposed to treatment contrary to articles 2 and 3 ECHR that the applicant would face if he were deported back to Syria. The applicant (a Syrian national) arrived in Italy on a vessel in 2017 and in the same year was twice impeded by French authorities, while attempting to enter France. The applicant was sent back to Italy and received a deportation notice from the Turin Chief of Police. He was held at the Turin Identification and Expulsion Centre to verify his identity. During this time, the applicant presented a request to the Court pursuant to art. 29 of the ECHR Regulations, stating that his deportation to Syria would be contrary to art. 2 and 3 ECHR, and challenging the deportation notice in front of the Justice of the Peace of Aosta. Pending the outcome of these appeals, the applicant was released by the Turin Chief of Police, as the maximum number of days that the applicant could be kept in the Identification and Expulsion Centre had been exceeded. He was ordered to leave Italy within seven days. The Court decided to strike out the case from its list pursuant to art. 37 para. 1 as from the circumstances it could be concluded that the applicant no longer wished to pursue the case before the Court, given that the legal representative informed the court that since presenting the appeal, the legal representative had heard no further news from the applicant and his phone number was no longer active (*N.D. and N.T. v. Spain* [GC] (Nos. 8675/15, 8697/15, 13 February 2020; *Ibrahim Hayd v. The Netherlands*, No. 30880/10, 29 November 2011, *Kadzoev v. Bulgaria*, No. 56437/07, 1 October 2013).

On 29 September 2020, the ECtHR ruled on the *Spina* case (No. 52/12), in which the applicant claimed that his detention constituted inhuman treatment according to art. 3 ECHR due to his poor health condition and the inadequate medical treatment received. The applicant suffered from diabetes and high blood pressure. He had been sentenced to prison for mafia-related crimes, including extortion racketeering aggravated by the mafia method. Since 2009 (the year in which he was first placed in protective custody, the applicant had on numerous occasions presented requests to be switched to house arrest or to suspend his sentence due to his health condition (which had also required him to be admitted to hospital and to undergo various medical examinations). However, the Italian authorities concluded that his medical condition was not as serious as the applicant implied, and that he was receiving adequate medical treatment - therefore, they dismissed his request for release, also taking into account the danger to society that the applicant could pose. The ECtHR received the observations presented by the Italian Government, which included the lack of exhaustion of domestic remedies, as the applicant had not challenged the dismissals of his requests in front of the Court of Cassation, nor had he filed a complaint in front of the Supervisory Magistrate, as provided for by art. 35 of law No. 354 of 1975. Furthermore, the Court stressed that the Italian authorities had been justified in dismissing

the requests of the applicant due to his danger to society and given that the applicant had been adequately provided with medical treatment whenever he needed, including in health structures outside the prison institute. The Court found that the applicant had undergone continuous medical check-ups and that, when necessary, had been admitted into external health structures for specialised tests. Therefore, the Court held that the case was inadmissible since not all domestic remedies had been exhausted, according to art. 35 ECHR.

On 15 October 2020, the *F.O. and others v. Italy and the Netherlands* (No. 48125/19) was struck out of the list according to art. 37 para. 1 letter a, as the applicants declared their wish to abandon the appeal after the Italian Government decided not to pursue the repatriation (under the Dublin regulation) to Holland of a Nigerian family with a small child. On 5 November 2020, the ECtHR decided to strike out the *Salvia* case (No. 32711/19) from its list pursuant to art. 35 ECHR. The applicant claimed that her aggressor had benefitted from the statute of limitations due to proceedings of more than 8 years. The parties reached a friendly settlement in which the Italian Government offered a compensation payment for non-pecuniary damages and legal costs and expenses.

II Right to Freedom, Security and Free Movement

In the *Jeddi* case (No. 42086/14), on 9 January 2020, the ECtHR ruled on the alleged violation of art. 5 ECHR, regarding illegal detention in an Identification and Expulsion Centre in Milan (CIE). In 2011, the complainant was arrested after docking without authorisation or identification documents on the island of Lampedusa. The Court of Naples dismissed his request for international protection, but had issued the applicant with a humanitarian residence permit until 31 December 2012 based on the Decree of the Prime Minister of 6 October 2011. The complainant had reached Switzerland and submitted an asylum application, but was sent back to Italy as of EC Regulation No. 343/2003 of 18 February 2003 (so-called Dublin Regulation). As soon as he reached the airport, the Italian authorities notified the applicant of a deportation order and took him to the Milan Identification and Expulsion Centre for leaving Italian territory. Therefore, the applicant complained of his illegal detention for 14 days at the Milan CIE, despite being in possession of a residence permit for humanitarian reasons, issued to him by the Court of Naples. The applicant also claimed that both the deportation order and the detention period at the Milan CIE were illegitimate in light of the judgment of the Court of Naples, which had granted him the residence permit for humanitarian reasons.

The Court noted that the deportation order had been adopted on the assumption that the applicant had declared to abandon his asylum application and that he was lacking all documents certifying his status. Furthermore, the confinement in the Milan CIE was ordered because the applicant had no identification documents and had not been able to provide any useful information on the proceedings or the lawyer in Naples to whom he kept refer-

ring. The good faith of the Milan authorities can also be deducted from the applicant's immediate release once they received a copy of the judgment of the District Court of Naples. Therefore, the Court concluded that there had been no violation of art. 5 ECHR, since the applicant's deprivation of liberty occurred in accordance with the legal framework and in the context of non-arbitrary proceedings.

III Right to a Fair Trial and Protection of Private Property

In the *Cicero and others v. Italy* case (No. 29483/11, 33534/11, 69172/11, 13376/12 and, in part, complaint No. 14186/12), with a judgment of 30 January 2020, the ECtHR resolved the case concerning the application of retroactive legislation to pending national proceedings. The applicants filed a complaint in national courts for not recognising their service period with the local government authorities after being transferred to work for a central government ministry. The applicants claimed that the recognition of the nominal duration of service was unlawful and detrimental. However, while pending those proceedings in front of the national courts, the Budget Law 2006 entered into force, and the courts dismissed the appeals on the basis of the its art. 1 para. 218. The applicants complained of a violation of their right to a fair trial due to the interference into their proceedings caused by the adoption of the Budget Law 2006 and a disproportionate interference in their right to peaceful enjoyment of property (art. 1 Protocol No. 1 ECHR). With respect to the former claim, the Court reiterated the general principle that has come from its own case law on the rule of law and fair trial enshrined in art. 6 ECHR, according to which a State cannot intervene to determine the outcome of a pending trial (except in cases of demonstrable needs in the general interest) *(Azienda Agricola Silverfunghi S.a.s. and others v. Italy*, Nos. 48357/07 and 3 others, 24 June 2014; see *Yearbook 2015* p. 319). In particular, mere financial reasons are not sufficient to justify such an interference by the legislator (*Scordino v. Italy* (No. 1) [GC], No. 36813/97, 29 March 2006; *Cabourdin v. France*, No. 60796/00, 11 April 2006; *Azienda Agricola Silverfunghi S.a.s. and others v. Italy*, cited above). The Court therefore held that there had been a violation of art. 6 ECHR as there had been "no compelling grounds of general interest" that could justify the application of retroactive legislation to pending proceedings. The applicants also complained that due to the application of retrospective law to their proceedings, they had seen their professional grade and career progression adversely affected. In this regard, the ECtHR acknowledged that the legislator's interference had caused an excessive and disproportionate burden on applicants in breach of art. 1, Protocol 1 ECHR (*Agrati and others v. Italy*, No. 43549/08, 5087/09, 6107/09, 7 June 2011, see *Yearbook 2012*, pp. 345-8; *Caligiuri and others v. Italia*, No. 657/10 and three others, 9 September 2014; see *Yearbook 2015*, p. 319). Therefore, the Government was ordered to pay an equitable sum for the pecuniary damages caused to the applicants.

In the *Sula* case (No. 58956/12), the ECtHR, with a judgment of 3 March 2020, ruled on the alleged violation of art. 6, paras. 1 and 3 ECHR for not being adequately informed on the details of the charges against him and

for the failure to interrogate the two trial witnesses during proceedings. In particular, the applicant complained that the charge against him had been reclassified, as the Court of Assizes added to the offence of purchase of slaves (art. 602 of the Criminal Code) the charge of reduction into slavery (art. 600 of the Criminal Code). The applicant claimed that due to this change in legal classification during his trial in front of the Court of Assizes, he had not had time to adequately prepare his legal defence strategy and consciously choose whether to continue with an ordinary procedure or a summary judgment. The ECtHR observed that, in light of the principles established in *Drassich* v. *Italy* case (No. 25575/04, 11 December 2007), the legal reclassification of crimes had occurred during the pleading stage of the first instance and therefore the applicant had had the opportunity to challenge this reclassification in successive levels of justice. Furthermore, the Court held that the legal reclassification had integrated basic elements that characterise the crime of reduction into slavery, and therefore this reclassification was an intrinsic element of the initial charge (*De Salvador Torres v. Spain*, No. 21525/9324 October 1996). Moreover, the Court added that the idea that the applicant would have chosen a summary judgment was mere speculation, in light of the fact that the applicant was also complaining that there had been a failure to interrogate witnesses, which is only foreseen by an ordinary procedure and not a summary judgment. To assess the compatibility of art. 6 with the use of the two witness statements, even if these were not called upon to speak as witnesses during the proceedings, the Court used the three-phase test established in the cases *Dadayan v. Armenia* (No. 14078/12, 6 September 2018), *Al-Khawaja and Tahery v. United Kingdom* ([GC]) (Nos. 26766/05 and 22228/06, 15 December 2012) and *Schatschaschwili v. Germany* ([GC]) (No. 9154/10, 15 December 2012). Therefore, the Court first assessed whether there had been serious reasons that would justify the failure to call witnesses. Once it had established that there were no serious reasons, the Court evaluated whether the witness testimony had constituted the only or decisive piece of evidence for the applicant's conviction. In this respect, the Court held that it could not give an unequivocal response, but that it was certain that the two witness testimonies had been significant during the proceedings. Regarding the third phase on the existence of counterbalancing factors, the Court held that the Italian courts had compared the statements with other evidence which corroborated the statements in question, allowing a full, coherent reconstruction devoid of inconsistencies on the role and criminal responsibility of the applicant. Therefore, the Court was satisfied that the process was fair, despite the fact that the Italian courts had not made all reasonable efforts to guarantee that the witnesses appeared in court. The ECtHR declared the complaint manifestly ill-founded and therefore inadmissible according to art. 35 ECHR as in general, neither the absence of witnesses nor the legal reclassification of the crimes had tainted the proceedings.

The judgment of 3 March 2020, in the *Bruni* case (No. 27969/10), concluded the dispute on the alleged violation of art. 6 for the lack of impartiality of the judge and the dismissal of the case without a preliminary hearing. The applicant was convicted of major fraud in respect of one of his clients and had pressed charges against this client and his brother-in-law. The Court found the appeal to be inadmissible according to art. 35 ECHR as the applicant had

not brought the case in front of the Court of Cassation against the Court of Appeal judgment and had no explanation on why this would not have been an appropriate remedy or that this remedy did not present any reasonable prospect of success.

With the judgment *Matteo v. Italy* (No. 24888/03) of 26 March 2020, the ECtHR ruled on the alleged violation of the right to a fair trial under art. 6 para. 1 ECHR and art. 1 of Protocol No. 1 ECHR. In the present case, Mrs Matteo had her terrain occupied then expropriated for public use. On 14 September 1992, the applicant brought a compensation claim in front of the District Court in Benevento. With judgment 22 December 2004, filed in the registry on 10 February 2005, the District Court declared that the expropriation for public use had not been emitted in a timely manner and the applicant had the right to compensation for the loss of her property. However, the Naples Court of Appeal overturned the verdict and verified the legitimacy of the occupation procedure with a judgment issued on 28 May 2008. In the meantime, in 2002, the applicant had already been provided with remedy under the Pinto Act and the Rome Court of Appeal in 2003 approved the claim for compensation for the excessive length of proceedings. The case brought before the ECtHR was based both on the alleged violation of the right to property, for the part regarding the expropriation, and for violation of the reasonable length of proceedings under art. 6 ECHR. Regarding the first part, the ECtHR took the view that the applicant cannot claim to be a victim of a breach of the Convention, as the Naples Court of Appeal concluded for the validity of the expropriation and the applicant had acquiesced to the decision. Regarding the second part of the application, the ECtHR ruled that the proceedings lasted for an unreasonable duration and the compensation granted under the Pinto Act was not in compliance with the criteria established in Strasbourg case law (see *Delle Cave and Corrado v. Italy* No. 14626/03, 5 June 2007; *Cocchiarella v. Italy* [GC], No. 64886/01, 29 March 2006). According to the ECtHR, therefore, there was a violation of art. 6, para. 1 of the ECHR and the State was ordered to pay 3,640 euros for non-pecuniary damage and 300 euros for costs and expenses.

With the judgment *De Cicco v. Italy* (No. 28841/03) of 26 March 2020, the ECtHR expressed its judgment on the alleged violation of the right to a fair trial pursuant to art. 6 para. 1 ECHR and of art. 1 of Protocol No. 1 ECHR. In the present case, on 28 May 1991, the Municipality of Benevento issued an order authorising the public electricity company, ENEL, to occupy the applicant's land for a period of five years in order to begin the construction of the power lines. On 3 October 1994, the applicant brought an action for damages against ENEL before the District Court in Benevento. He alleged that the occupation of the land had been unlawful, as the Mayor's order of 28 May 1991 had not specified the beginning and end dates of the five-year occupation period. Moreover, he argued that the construction work had been completed without a formal order establishing an easement being issued. The District Court ordered an expert valuation of the land. In a report submitted on 7 July 1998, the expert found that the deadline for the lawful occupation of the land had expired on 7 July 1996. With the 14 December 2006 judgment, filed with the registry on 19 December 2006, the Benevento District

Court held that the occupation of the applicant's land in order to build the power lines had not been carried out according to the law, although not ordering the removal of the power lines. The District Court The court established an easement over electric lines on the applicant's land and held that the applicant was entitled to compensation calculated by the expert, adjusted for inflation and to be increased by the amount of statutory interest due. The applicant did not make an appeal against the judgment of the district court of Benevento. Pending completion of the proceedings in front of the District Court, the applicant brought the case in front of the Rome Court of Appeal, which declared its judgment pursuant to the Pinto Act with judgment 10 April 2003, recognising an equitable compensation of 900 euros in addition to costs and expenses. The case brought before the ECtHR is based both on the alleged violation of the right to property, for the part regarding expropriation, and on the breach of art. 6 ECHR on the reasonable duration of judicial proceedings. Regarding the first part of the application, the ECtHR took the view that the applicant cannot claim to be a victim of the breach of the Convention complained of, as the Court could not find any evidence that ownership of the applicant's property was transferred from the applicant to the local authority through the application of the constructive expropriation principle. Regarding the second part of the application, after underlining the length of the proceedings before the District Court in Benevento, the ECtHR held that the compensation awarded pursuant to the Pinto Act had been sufficient to redress the unreasonable length of the procedure (see *Cocchiarella v. Italy* [GC], No. 64886/01, cited above) and, therefore, concluded that there was a violation of art. 6 ECHR, ordering the Government to pay a further 3,420€ euro, other than costs and expenses, for non-pecuniary damage.

With the judgment *Felloni v. Italy* (No. 44221/14) of 26 March 2020, the ECtHR ruled on the alleged violation of the right to a fair trial pursuant to art. 6 para. 1 ECHR and the alleged violation of the non-retroactivity of criminal law pursuant to art. 7 ECHR. On 29 September 2007, the applicant was pulled over during a road check and subjected to a breathalyser test. Following this check, criminal proceedings were brought against him in front of the Ferrara District Court for drink-driving. With judgment 14 November 2011, the Ferrara District Court found the applicant guilty, sentencing him to a suspended prison term of one month and a fine of 900 euros, as well as a suspension of one year of his driving license. He appealed, pleading not guilty, and, in the alternative, raised the defence of mitigating circumstances under art. 62-*bis* of the Criminal Code, arguing in particular that he had no previous criminal record. With a judgment on 22 May 2012, the Bologna Court of Appeal dismissed his appeal and upheld the conviction. It dismissed his plea of mitigating circumstances, finding that the absence of a criminal record (the only mitigating circumstance presented by the applicant) no longer permitted a reduction in sentence. The Court of Appeal found no other mitigating factor and could not take account of his behaviour at the trial, during which he had shown no sign of remorse. The Court also considered the fact that, after the offence in question, the applicant had once again been arrested in his vehicle while under the influence of alcohol and had defended his case with arguments similar to the unfounded and misleading claims in the present case. The applicant appealed the judgment. One of the reasons he submitted

was the retroactive application of law No. 125 of 2008 to his case and claimed that this law had amended art. 62-*bis* of the Criminal Code. In particular, he had not been granted the benefit of mitigating circumstances (that he had no criminal record) in accordance with the legislation in force at the material time, as subsequently amended by another law, on 24 July 2008, that is, after the date that the offence in question was committed. With a decree of 26 February 2014, the Court of Cassation declared all the appeal grounds of the applicant inadmissible, concluding that the Court of Appeal had already clearly indicated its reasons to declare the applicant criminally responsible for the offence in question. In front of the ECtHR, the applicant argues that the Court of Cassation failed to respond to his ground of appeal concerning the allegedly retroactive application of law No. 125 of 2008 to his case and that therefore his case had not been fairly examined as, in his opinion, neither the District Court nor the Court of Cassation had given a response to a point of law that he considered decisive for his defence. The ECtHR recalled that even though courts cannot be required for every single one of the applicant's grounds of appeal to give their reasons for dismissal, they must re-examine the main reasons for the appeal and respond to them (*Moreira Ferreira v. Portugal* (No. 2) [GC], No. 19867/12, 11 July 2017). Moreover, if these reasons are related to the rights and freedoms guaranteed by the Convention or its Protocols – such as the principle of non-retroactivity of criminal laws – the domestic courts are obliged to carefully and rigorously examine them (*Wagner and J.M.W.L. v. Luxembourg*, No. 76240/01, 28 June 2007; *Magnin v. France* (dec.), No. 26219/08, 10 May 2012). Furthermore, according to the Court of Strasbourg, reasoned decisions also serve the purpose of demonstrating to the parties that they have been heard, thus contributing to a more willing acceptance of the decision on their part (*Taxquet v. Belgium* [GC], No. 926/05, 16 November 2010). Therefore, in dismissing the appeal, the appeal courts can, in principle, exclusively give their reasons for the disputed judgment, but only if they have effectively examined all the fundamental aspects of the appeal (*Helle v. Finland*, No. 20772/92, 19 December 1997; *Boldea v. Romania*, No. 19997/02, § 30, 15 February 2007). In conclusion, the ECtHR held that the applicant had not been guaranteed an effective examination of his arguments or a response allowing him to understand the reasons for their dismissal. Consequently, the Court of Cassation had failed in its duty to give reasons for its decisions and therefore there had been a violation of art. 6, para. 1 ECHR. Additionally, based on art. 7 ECHR, the applicant complained that the District Court and the Court of Appeal retroactively applied law No. 125 of 2008 to deny him the benefit of mitigating circumstances and therefore a reduction in his sentence. In the applicant's opinion, if the Court had not applied law No. 125 of 2008 – which amended the Criminal Code by limiting the court's discretion in the mitigating factors considered for sentence reduction –, the lack of a criminal record would have constituted a sufficient factor to reduce his sentence. The ECtHR recalls that art. 7 ECHR is not limited to prohibiting retrospective application of the criminal law to the disadvantage of an accused, but embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that the criminal law must not be extensively construed to the detriment of an accused, for example, by analogy (*Kokkinakis v. Greece*,

No. 14307/88, 25 May 1993). However, according to the ECtHR, the setting of the applicant's sentence had followed the weighing of all relevant factors. In that context, there was nothing to suggest that the Court of Appeal, if it had not examined the case under the new law No. 125 of 2008, would have granted him the benefit of mitigating circumstances and taken account of his lack of criminal record. In light of this, the applicant had not therefore been penalised on account of the consideration, under the new law, of facts which had pre-dated the entry into force of that legislation. Therefore, there had been no violation of art. 7 ECHR. In conclusion, the ECtHR held that the applicant had suffered moral damages which could not be remedied simply with the determination by the ECtHR. As a result of judgment 7 April 2011 No. 113 of the Italian Constitutional Court, art. 630 of the code of criminal procedure had been amended to allow for a revised trial based on an ECtHR judgment of violation of the principles of fair trial (*Drassich v. Italy* (No. 2), No. 65173/09, 22 February 2018, see *Yearbook 2019*, pp. 249-250). Accordingly, the defendant can request that his case be re-examined. In view of this possibility, the Court held that the applicant should receive the sum of 2,500 euros in respect of non-pecuniary damage.

With the judgment *Avellone and others v. Italy* (Complaint No. 6561/10) of 9 July 2020, the ECtHR ruled on the alleged violation of the right to a fair trial pursuant to art. 6 para. 1 ECHR. The applicants fell into one of the categories listed in law 24 May 1970 No. 336 (veterans, disabled war veterans, war widows, civilian victims of war), either directly or because they were heirs of the persons entitled. In 1985, the Italian State introduced a monthly increase in pensions for persons of certain categories, as foreseen by law 336/1970. After the retirement of the applicants, INPS (National Social Security Institute) recognised that all of them were entitled to a pension increase from the date they were eligible to claim their pensions. However, the applicants brought several administrative actions against the INPS to have the automatic adjustment of the increase in line with the cost of living calculated from the year in which the law had entered into force (1985), rather than from the date when they had become eligible to claim their pensions. Following INPS' dismissal of their administrative actions, the applicants instituted judicial proceedings in the district courts, which, up until that moment, had always ruled in favour of retired workers, obliging the INPS to calculate the adjustment for the increase from 1985. However, during court proceedings, law 244/2007 entered into force, providing for an authentic interpretation of section 6(3) of Law no. 140/1985, establishing that the latter had to be interpreted as meaning that the increase provided for in section 6(1) had to be adjusted from the time it was granted to entitled persons (upon their retirement). Consequently, the District Courts applied the new law on authentic interpretation. The ECtHR, after overcoming some preliminary issues regarding some applicants, decided that the legislative intervention - namely the enactment of law no. 244/2007, which amended well-established case law while proceedings were pending, had determined the substance of the dispute, definitively modifying the outcome of the pending litigation to which the State was a party, endorsing the State's position to the detriment of the applicants. On this point, the Court repeatedly held that although the legislature is not prevented from regulating, through new retrospective provisions, rights derived from the laws

in force, the principle of the rule of law, and the notion of a fair trial enshrined in Art. 6 preclude, except for compelling public interest reasons, interference by the State with the administration of justice designed to influence the judicial determination of a dispute (see, among numerous others, *Zielinski and Pradal and Gonzalez and others v. France* [GC], Nos. 24846/94 and 9 others, 28 October 1999, and *Stefanelli and others v. Italy* (merit), Nos. 21838/10 and 7 others, 15 April 2014; see *Yearbook 2015* p. 321). Therefore, in the present case, there was a violation of art. 6 of the Convention.

With the judgment *Grieco v. Italy* (No. 59753/09) of 3 September 2020, the ECtHR commented on the alleged violation of the right to a fair trial pursuant to art. 6 para. 1 ECHR. Even though they were not joint cases, the judgment presented substantially the same legal issues as the *Facchinetti v. Italy* judgment (complaint No. 3497/09), as referred to below.

With the decision *Pellegrinelli v. Italy* (No. 31141/09) of 3 September 2020, the ECtHR ruled on an application on the alleged violation of the right to a fair trial, pursuant to art. 6 para. 1 ECHR. This judgment, though presenting similar legal issues as in *Facchinetti v. Italy* (Complaint No. 3497/09), was ruled inadmissible by the ECtHR as the enactment of law 296/2006 did not influence in any way the judicial determination of the applicant's dispute and consequently the applicant cannot claim to be a victim of the alleged violation of art. 6 ECHR.

With the judgment *Facchinetti v. Italy* (No. 3497/09) of 3 September 2020, the ECtHR ruled on an application on the alleged violation of the right to a fair trial, pursuant to art. 6 para. 1 ECHR. Specifically, the applicant complained that the enactment of law No. 296/2006 had denied her right to a fair trial. In the circumstances of the case, the late applicant's husband had filed a complaint with the INPS to have his pension recalculated, as it did not respect the Italo-Swiss Social Security Convention of 1962. The INPS dismissed his application; therefore, the applicant's husband lodged a claim with the District Court in Bergamo which was upheld. The decision was then overturned by the Brescia Court of Appeal. While the relevant proceedings before the Court of Cassation were pending, law No. 296/2006 entered into force, introducing an interpretation of the legal provisions on pensions that was diametrically opposed to the meaning given to them by the established case law of the Court of Cassation. The Court dismissed the appeal, applying the new legal interpretation. Consequently, the applicant, as her husband's successor, brought the case before the ECtHR. The ECtHR ruled favourably on the legitimacy of the applicant to lodge the complaint, as she had not been part of the national court proceedings. As the heir of her late husband, she had a "definite pecuniary interest" in the proceedings at issue. On the merits of the case, the ECtHR found that the Italian Government had interfered in favour of one of the parties in pending proceedings with the enactment of the law, and, therefore, there had been a violation of art. 6 ECHR (circumstances that were de fact and in law analogous to those described in *Maggio and others* v. *Italy* Nos. 46286/09 and 4 others, 31 May 2011 and *Stefanelli and others v. Italy* Nos. 21838/10 and 7 others, 15 April 2014; *see Yearbook 2015*, p. 321). The ECtHR ordered Italy to pay compensation to the sum of €11,212

in respect of pecuniary damages; 5,000 euros in respect of non-pecuniary damages €500 for costs and expenses.

With the decision *Mediani v. Italy* (case No. 11036/14) on 1 October 2020, the ECtHR declared an application on the alleged violation of the right to a fair trial, pursuant to art. 6 para. 1 ECHR, inadmissible. In this case, the applicant complained about the excessive length of a special appeal in front of the President of the Republic. The appeal against a decision that denied him any advancement in his career was filed on 13 July 2004 and was still ongoing on 11 December 2018. When justifying the decision of inadmissibility in the case at hand, the ECtHR recalled how the procedure for lodging a special appeal with the President of the Republic had changed. With the *Nardella v. Italy* decision (No. 45814/99), the Court denied the applicability of art. 6 ECHR to this extra-judicial remedy. The ECtHR notices that in 2009 and 2010, various amendments to the legislation reformed the institute, so that it could now be regarded as a judicial remedy, after the introduction of the binding opinion of the Council of State. However, in the instant case, since the application was introduced in 2004, the ECtHR declared that the appeal could not be considered as a judicial remedy. The applicant must file a claim for compensation through the procedure outlined in the Pinto Act.

On 15 October 2020, the ECtHR decided to strike out the *Onorato* (No. 51197/13) from its list, finding that the unilateral proposal of the Italian State to resolve the case through three-monthly payments did not then justify the continuation of the case in front of the court, even if the resolution was not accepted by the applicants.

With the judgment *Tondo v. Italy* (No. 75037/14) on 22 October 2020, the ECtHR ruled on an application on the alleged violation of the right to a fair trial, pursuant to art. 6 para. 1 ECHR. Specifically, in the current case, the applicant complained of the failure of the appeals judge to allow the interrogation of a new witness for the prosecution before overturning the acquittal verdict given in the first instance. In the present case, the applicant and his brother were accused of killing a person and grievously harming another after a violent fight. With a judgment of 29 January 2009, after hearing around twenty witness statements that were deemed substantially unreliable, the Lecce Court of Assizes had acquitted the two brothers, finding that the applicant had acted with legitimate self-defence and the brother had not committed any crime. With a judgment of 27 November 2012, the Lecce Appellate Court of Assizes, called upon by the Public Prosecutor's Office and civil parties, overturned the first instance judgment and convicted the two accused, allowing, contrary to the courts of first instance, the testimony of one of the witnesses who had been found to be unreliable, without, however, listening to the witness directly in a hearing. The applicant and his brother lodged an appeal with the Court of Cassation claiming, among other things, that the Appellate Court of Assizes had acted without respecting the conditions laid out in art. 6 ECHR as it had reassessed the credibility of the witness for the prosecution without ordering a new hearing of that witness. With a judgment issued on 21 May 2014, the Court of Cassation partially received the application. The Supreme Court concluded that the Assizes Appellate Courts effectively violated art. 6 ECHR, as it had reassessed the credibility

of a decisive witness statement without hearing the witness directly. However, in the opinion of the Supreme Court, this conclusion is only relevant to the applicant's brother, who was convicted by the Appellate Courts of Assizes for conspiracy to murder, and not the applicant himself, who was found unquestionably responsible for the murder based on further evidence. Upon the referral of the case to the Court of Cassation, with a judgment of 21 August 2015, and after hearing the witness and judging them credible, a new judge from the Taranto Appellate Courts of Assizes sentenced the applicant's brother to a 12 year imprisonment and the applicant to a 19 year imprisonment (after granting him the benefit of mitigating circumstances). In front of the ECtHR, the applicant stated that the Appellate Courts of Assizes had convicted him without directly examining a key witness for the prosecution who had been dismissed as unreliable by the first instance judges. On this point, the ECtHR held that the appeals judge had not stopped at conducting a new assessment of purely juridical elements, but had ruled on a factual issue, that is, the credibility of a key witness, therefore changing the facts ascertained by the first instance judges. The Court of Strasbourg underlined that the credibility assessment of a witness is a complicated process that normally would not take place over a simple reading of the witness declaration, shown in the minutes of the hearing (*Lorefice v. Italy,* No. 63446/13, 29 June 2017, see *Yearbook 2018*, p. 314). Consequently, in the opinion of the ECtHR, the Court of Cassation had operated correctly, ordering the referral judge to hear the witness. However, it did not agree with the reason the Court of Cassation gave regarding why this principle should only apply to the applicant's brother (charged with conspiracy to murder) and not to the applicant. Therefore, the Court considered that by not conducting a new witness hearing before invalidating the acquittal verdict of the first instance court, the Appellate Courts of Assizes greatly limited the rights to a defence of the applicant. Furthermore, the ECtHR observed that the judges that found him guilty had never heard the applicant – even though he was present at the trial –, denying him the opportunity to present his own arguments on decisive issues (*Lacadena Calero v. Spain*, No. 23002/07, 22 November 2011, and, in contrast, *Mujea v. Romania*, No. 68964/13, 10 September 2020). The ECtHR concluded that the applicant was denied the right to a fair trial, in violation of art. 6 ECHR. The Court ordered Italy to pay 6,500 euros in respect of non-pecuniary damage.

With the decision *Ambrosio v. Italy* (No. 47271/16) on 22 October 2020, the ECtHR declared inadmissible an application concerning the alleged violation of the right to a fair trial pursuant to art. 6 para. 1 ECHR and the alleged violation of non-retroactivity of criminal law pursuant to art. 7 ECHR. The applicant was condemned to a life sentence by the Naples Court of Assize in 1998, and the sentence was confirmed by the appellant court in 1999. The applicant again appealed, requesting a reduction of the sentence to 30 years under art. 442 Criminal Procedures Code. With a judgment of 22 October 2000, filed with the registry on 24 November 2000, the Court of Cassation dismissed the application. In 2009, *Scoppola v. Italy* (No. 2) [GC] (No. 10249/03, 17 September 2009) was published, in which the ECtHR ruled that art. 7, para. 1, in the event of a succession of criminal laws in time, the ECHR imposed the application of the most favourable provision for the accused and, on the basis of art. 6 ECHR, that all procedural safeguards (which a defend-

ant waives when they opt for an abbreviated procedure) constitute fundamental aspects of the right to a fair trial. Moreover, the applicant referred the matter to the ECtHR to obtain recognition of the violation of Articles 6 and 7 ECHR by the Italian State. Nevertheless, the Court of Strasbourg found the case inadmissible as it was presented more than six months after the final domestic decision.

In the *Moreira Dos Santos* case (No. 58528/13) on 5 November 2020, the Court struck out from its list a dispute pursuant to art. 37 para. 1 letter a, as from the circumstances it was possible to assume that the applicant did not wish to pursue the case before the Court, as there had not been a response to the letter sent by the ECtHR, inviting the applicant to respond to the Government's observations on the case. On 5 November 2020, the ECtHR struck out the case *D.C. v. Italy* (No. 17289/20) from its list because the applicant did not wish to pursue the case.

On 19 November 2020, the ECtHR decided to strike out the *Scotti and Di Maro Guadagnano* case (No. 57512/18 and No. 57513/18) from the list, which had been presented pursuant to art. 6 ECHR and art. 1 Protocol 1 on the access to justice and protection of property. In all cases, a friendly settlement had been made with the Italian State which offered a payment of compensation for any damages and costs sustained.

With the judgment *Causa Edizioni del Roma società cooperativa a r.l. and Edizioni del Roma S.R.L. v. Italy* (Complaints Nos. 68954/13 and 70495/13) of 10 December 2020, the ECtHR ruled on the alleged violation of the right to a fair trial pursuant to art. 6 para. 1 ECHR. In particular, the applicant companies complained that the procedure conducted by AGCOM (Communications Regulatory Authority), at the end of which pecuniary sanctions had been imposed on the applicants, was not fair, specifically citing a failure in the independence and impartiality of the body. In this case, the companies had been granted public financing for publishing, following which an application was made for violating the duty to communicate their corporate control status pursuant to art. 1, para. 8 of law No. 416 of 1981 had been filed, and consequently, an administrative sanction was imposed. This led to the insolvency of one of the companies. In both the first and second instances, the Lazio Regional Administrative Court and the Council of State held that neither the right to a defence nor the adversarial principle had been violated and that all parties had been given access to all information and public hearings. They further observed that AGCOM had correctly interpreted law No. 416 of 1981 and that the status of corporate control had been impugned after a meticulous examination of the facts.

After unsuccessfully exhausting all domestic remedies within the administrative courts, the applicants presented their cases before the ECtHR. After recalling that a sanction can be defined as "criminal" considering, alternatively (*Jussila v. Finland [GC],* No. 73053/01, 23 November 2006; *Zaicevs v. Latvia, No. 65022/01, 31 July 2007*), of the legal classification of the measure under national law, of the nature of this law, and of the nature or level of severity of the "sanction" *(Engel and others v. The Netherlands,* No. 5100/71 and 4 others, 8 June 1976), the Court of Strasbourg held that the sanctions

imposed were criminal in nature and, therefore, art. 6, para. 1 ECHR was applicable under its criminal head. In this case, the Court found that the AGCOM procedure had not met all the requirements of Art. 6, particularly with respect to the equality of arms between prosecution and defence and the holding of a public hearing allowing for oral confrontation (*Grande Stevens et al. v. Italy,* No. 18640/10 and 4 others, 4 March 2014, *see Yearbook 2015*, pp. 317). However, the ECtHR found that there was no violation of art. 6 ECHR, as the companies had been given and subsequently took the opportunity to challenge the sanctions in front of the administrative court and the Council of State, two courts of full jurisdiction which did not simply verify the legality of the decision, but also ensure that, with respect to the circumstances of this case, AGCOM had correctly used its powers. They were also able to examine the validity and proportionality of the AGCOM sanctions. Consequently, the ECtHR dismissed both appeals.

IV Private and Family Life

In the *Nicolao and Lazzerotti* case (No. 19366/14) with a decision of 19 March 2020, the ECtHR struck out from its list (pursuant to art. 39 ECHR) a case in which the applicants complained of the violation of their right to respect private and family life due to the refusal of the Italian Government to transcribe their homosexual marriage issued by a foreign authority. It was struck out due to the Court receiving the declaration of friendly settlement as the applicants had decided not to continue with any further demand against Italy.

In *Barletta and Farnetano* (No. 55431/09) of 26 March 2020, the applicants (mother and son) complained of alleged medical negligence during the mother's hospitalisation and the birth of her son, in which she alleges a violation of their right to respect for family life according to art. 8 ECHR. On 11 December 1994, the applicant was admitted to Sapri hospital with a premature rupture of the membranes. The applicant was kept in hospital and under observation for the development of the foetus. On 20 December 1994, the medical staff decided to perform a caesarean section. After birth, the applicant's son was transferred straight into intensive therapy, and was hospitalised many times during his childhood, where he was diagnosed with a spinal cord injury (tetraplegia). In 1999, the applicant filed a complaint against the medical team for negligence and falsifying public documents. The District Court brought the medical team to trial and found them criminally liable, holding that the delay in conducting the caesarean section caused damage to the foetus. This decision of the Sala Consilina district court was overturned in 2009 by both the Salerno Court of Appeal and the Court of Cassation. The courts acquitted the medical team, stating that it was impossible to assert with any meaningful judicial certainty that the injury suffered by the mother could be linked to the actions of the medical staff. The applicants complained of a violation of articles 1, 2, and 6 of the ECHR, which the Court (as it is free to reclassify a case at any time) decided to examine the case pursuant to art. 8 of the ECHR, since, as follows from the Court's own case law, this art. includes matters related to the moral and physical integrity of a person in the context of medical treatment (see, among many others, *Trocellier v. France*

(dec.), No. 75725/01, 5 October 2006; *Codarcea v. Romania*, No. 31675/04, 2 June 2009; *Erdinç Kurt and others v. Turkey*, No. 50772/11, 6 June 2017). From a substantial point of view, the Court found that there were ongoing civil proceedings to investigate medical negligence and therefore (pursuant to art. 35 of the Convention) not all domestic remedies had been exhausted. From a procedural point of view, the Court assessed whether the judicial proceedings (aiming to find the cause of the damage to the physical integrity of the second applicant) had been efficient, independent, and concluded within a reasonable time (*Lopes de Sousa Fernandes v. Portugal* [GC], No. 56080/13, 19 December 2017; *Mehmet Ulusoy and others v. Turkey*, No. 54969/09, June 2019; *Erdinç Kurt and others*, cited above; *Vasileva v. Bulgaria*, No. 23796/10, 17 March 2016). The Court acknowledged that the applicants had been able to participate in the proceedings, presenting evidence and accessing the results of the investigations, and that the investigations had been conducted overall adequately. However, the Court observed that the ten years taken for the investigations of medical negligence cannot be considered a reasonable time, especially since "these types of delay create a stressful and uncertain situation both for applicants and medical professionals alike" (see, *mutatis mutandis, Lopes de Sousa Fernandes*, cited above). Therefore, the Court concluded that there had been a violation of a procedural point of art. 8 ECHR and ordered the Italian Government to pay €12,000 in respect of non-pecuniary damage and €6,000 for costs and expenses.

On 28 April 2020, the ECtHR struck out *S.L. and others* case (No. 896/16) from its list. The applicant complained that the Italian authorities had taken six years to rule on the custody of the second applicant, the son of the first applicant, and on the child's return to Italy, violating its duty of due diligence within separation and child custody proceedings pursuant to art. 8 ECHR. The mother had taken her son to Romania and had not returned to Italy. The applicant filed a request for legal separation before the Teramo District Court to separate from his wife and to gain exclusive custody of his son, and therefore the son's immediate return to Italy. Meanwhile, the mother of the child filed a divorce request with the Romanian authorities. After successive stages of appeal in front of both the Italian authorities and the Romanian authorities and a preliminary question on the interpretation on the notion of European *lis pendens* (pursuant to art. 19 of regulation no. 2201/2003, for which the European Court of Justice had already been called to give its opinion), the complaint was concluded with a judgment of the Bucharest Court of Appeal declaring the divorce of the couple, granting exclusive custody to the mother and establishing the way in which the father (the first applicant) could enjoy his right to visit the child. The ECtHR was called to rule exclusively on the duty of due diligence of the District Court in Teramo (pursuant to the procedural process set out in art. 8 ECHR) stressing that in cases concerning the relationship between children and parents, national authorities have a duty to act with exceptional diligence as prolonged cases could have "irreparable consequences for the relationship between parents and children who do not live together (see *mutatis mutandis*, *Ignaccolo-Zenide v. Romania*, No. 31679/96, 25 January 2020; *I. Maire v. Portugal*, No. 48206/99, 26 June 2003; *Bianchi v. Switzerland*, No. 7548/04, 22 June 2006; *Mincheva v. Bulgaria*, No. 21558/03, 2 September 2010). The Court held that

the Teramo district court had ruled on the case in a reasonable time, given that it had issued a provisional judgment on the custody of the child and the return of the child to Italy four months and 12 days after the applicant filed his appeal. The Court also observed that the overall length of the proceedings depended on the application filed by the mother of the child in Romania and the strained relationship between the two parents, underlining that the applicant had not challenged the judgment of the Bucharest Court of Appeal from 2013. Therefore, the Court concluded that the Italian authorities had acted with necessary due diligence in promptly adopting all measures that could reasonably be expected to ensure that the applicant could maintain a family tie in the best interest of both parties. Therefore, the Court ruled the case inadmissible according to art. 35 ECHR para. 4, declaring it manifestly ill-founded.

In the *Spano* case (No. 28393/18), with the judgment of 28 May 2020, the ECtHR ruled on an alleged violation of the right to respect for family life pursuant to art. 8 ECHR due to the failure of the Italian authority to adopt the necessary measures to maintain the relationship between him and his son. The case dates back to 2009, when a District Court convicted the father for aggravated sexual abuse against his son and ordered the termination of the man's parental rights. The applicant was subsequently acquitted in a Court of Cassation judgment in 2014, following which the Juvenile Court requested the reinstatement of his parental rights. The Juvenile Court, after assigning social services with the task of drawing up an assessment report on the possibility of organising meetings between the father and son, dismissed the application for reinstatement of the father, which could foresee the re-establishment of relations in the near future. Therefore, the Court assigned social services with the drawing up of a project to define the criteria necessary and the best way to facilitate the reunion between the father and son. The applicant challenged this Court decision, and in 2016, his parental rights were reinstated. The social services were reassigned the role of drawing up a project to re-establish family ties between the father and son, focusing on the balanced development of the child who had a strong, close relationship with his mother. In 2017, following reports from social services that demonstrate first the lack of any attempt to mediate between the parties involved and second the failure to organise meetings due to the child's refusal and the mother's lack of collaboration, the Court of Appeal confirmed the reinstatement of parental rights, but at the same time stated that it was not possible to provide an expert report since the child had come of legal age. Therefore, the applicant claimed that the Italian authorities had not taken all necessary steps to prevent the estrangement of the applicant with his son. The ECtHR declared that the measures taken to terminate parental rights and restrict the visitation rights of the applicant pending criminal proceedings for sexual abuse against the child were justified by the duty to protect the best interest of the child. Regarding the duty of the Italian authorities to take all steps that could reasonably be expected to facilitate the reunion of father and child upon the father's acquittal (*Bondavalli v. Italy*, No. 35532/12, 17 November 2015; *see Yearbook 2016*, p. 265; *Hokkanen v. Finland*, No. 19823/92, 23 September 1994; *Kuppinger v. Germany*, No. 62198/11, 15 January 2015), the Court noted that the Italian authorities had promptly taken the necessary steps to this effect. In the Court's opinion, this

can be seen in the fact that more than once the national authorities ordered social services to create a plan for progressive reunion between father and son, had organised meetings between them and also made psychological support available for both parents and child. The Court acknowledged that reconciliation had been hindered mainly by the child's refusal, a crucial aspect that the national authorities had to take into account, stressing that "maximum caution is necessary when it comes to falling back on coercive measures in this sensitive area" (*Mitrova and Savik v. the former Yugoslav Republic of Macedonia*, No. 42534/09, 11 February 2016; *Reigado Ramos v. Portugal*, No. 73229/01, 22 November 2005). Therefore, the Court declared the complaint inadmissible as there had been no violation of art. 8 ECHR, considering that, given the complexity of the situation and the State's margin of discretion on this issue, the national authorities took all possible steps that could reasonably be expected to ensure the applicant's visitation rights.

With the judgment regarding the *Santonicola and Palumbo* case (No. 30589/18 of 18 June 2020), the ECtHR ruled on the alleged violation of the right to a private and family life pursuant to art. 8 ECHR by the Italian authorities for the failure to take steps to maintain a relationship between the applicants and their granddaughter. The applicants brought their case before the Juvenile Court of Naples regarding the behavior of the mother (their daughter) who refused to develop a relationship with them and did not inform them of the birth of the grandchild. In front of the Court, the applicants' daughter motivated her decisions citing the violence and abuse that she claimed to have suffered as a teenager by the parents themselves. Following a psychosocial investigation, the Court rejected the applicants' claim, not considering it in the best interests of the child to maintain a relationship with her grandparents given the deeply conflictual relationship between the mother and grandparents which not only had already caused attempts at professional mediation to fail, but the accusation of violence was also the subject of an ongoing criminal investigation. In 2014, the applicants appealed against the decision of the Juvenile Court of Naples and the Court of Appeal ordered Maria Capua Vetere social services to organise two meetings a month between the grandparents and the grandchild. In 2016, the tutelary judge was informed via social services report that the meetings had been suspended for various reasons: in particular, the strained relationship between all parties; and that the child (who at that point had started school) fell asleep during the journey to the meetings. Therefore, the tutelary judge instructed social services to organise the meetings at more suitable times. In 2017, the applicants were convicted for abuse against the daughter. Following this sentence, in 2017, the tutelary judge acknowledged the fact that meetings were suspended due to the refusal of parents to take the child to meetings and that the applicants had stopped requesting meetings. The applicants therefore complained that the national authorities had not taken all necessary steps to ensure their visitation rights. However, the ECtHR held that the applicants had not exhausted all domestic remedies under art. 35 ECHR, specifically for not presenting their complaint (under art. 337-*ter* of the Civil Code) in front of the Court of Appeal for the failure of social services to carry out the Court's decision. Therefore, according to the Court of Strasbourg, the Italian Government had not been placed in the condition to be able to remedy the violation of the Convention: if the

applicants had appealed directly to the Court of Appeal (as provided for by art. 337 of the Civil Code), the Court would have been able to take specific and adequate measures to ensure grandparents' visitation rights. The Court therefore declared the case inadmissible.

The case of *E.C. v. Italy* (No. 82314/17, judgment of 30 June 2020) concerned the compatibility between the right to respect for family life under art. 8 ECHR and the placing of the applicant's sixteen-year-old son in a foster family. In 2014, the family was investigated by social services, as the older of the two children of the applicant had filed a report of sexual abuse against his (paternal) uncle. The investigation showed that the two children lived with the parents of one of the children's schoolmates. Furthermore, a psycho-social assessment of the children showed a deeply conflictual relationship between the children and their parents, due to the fact that their father beat them, and that the daughter had received no support from the parents following her accusations against the uncle. Based on this investigation and the request from social services for clear protection measures for the children, in 2015, the Court gave custody of the children to a foster family. Later in the year, the parents filed a request for the underage son to be brought back to their home, as his sister was in legal age. The Court dismissed the request, stating that the family had not yet met the criteria to allow the child to come back. However, it requested that social services change the way in which meetings between the child and his parents were managed. In 2016, the parents filed another request for the child to be brought back to their home, citing the lack of regular contact with the son (two calls a week) and the negative influence of their daughter on him as motivations. The psychological assessment of the social worker showed that the lack of contact was of the son's own volition – he had requested some space from his biological family, although there had been an attempt at mediation, without success. The applicant, the mother of the child, complained that the Italian authorities had not encouraged the child's return to his biological family or had taken real measures to support this. The Court recalled that the Italian authorities had been careful to take all the positive and appropriate measures necessary to reunite the biological family as soon as possible and considered fostering the child in another family to be a temporary measure (*Strand Lobben and others v. Norway* [GC], No. 37283/13, 10 September 2019). The Court underlined that these fundamental principles, which have been elaborated through case law, are to be integrated with the principle of the best interest of the child as provided for by art. 3 of the CRC. In this regard, the Court noted that the Italian authorities had in two separate proceedings evaluated the position of the family and the development of the situation, conducting a precise and in-depth investigation based, among others, on reports of therapists and social assistants who were following the case. Therefore, the Court found that the District Court's decision to give custody of the children to an alternative family was based on a detailed assessment of the psychological and emotional condition of the children, the incapacity of emotional, nurturing and educational support from the parents, the lack of relationship development between the children and parents, and the wishes of the child himself, who, at 16 years of age, was sufficiently capable to judge for himself. As underlined by the Court and provided for by the ECHR, this final aspect is a key element to be considered in any judicial or adminis-

trative proceedings regarding minors (*M. and M. v. Croatia,* No. 10161/13, 3 September 2015; *M.K. v. Greece,* No. 51312/16, 1 February 2018). The Court therefore held that the Italian authorities had, in their decision, assessed the family situation in its entirety, had developed their decision alongside this, and had taken into account both the best interests of the child and his own wishes, and therefore declared the complaint inadmissible.

On 15 October 2020, the ECtHR decided to strike out the case *D.C.* (No. 17289/20) from the role, pursuant to art. 37 para. 1 letter a, since the applicant had expressed her wish not to continue with the case in front of the Court, as the Italian Government had brought forward her hearing on the adoption of urgent provisional measures for the daughter of the applicant who was, at that moment, in prison.

In the *A.V.* case (No. 36936/18*,* judgment of 10 December 2020), the applicant complained of a violation of art. 8 ECHR due to difficulties in fully exercising his visitation rights for his child. A year after separating from his wife, the Juvenile Court of Rome granted the applicant the right to visit his son three times a week. Following this first ruling, the applicant filed various complaints with the national courts for failure to respect these visitation rights, in that often meetings did not take place due both to the mother's obstructive behaviour and the child's own refusal, as also documented in social services reports. This situation led the Rome District Court to grant joint custody of the child to both parents; however, noting the worsening psychological condition of the child, the Court then ordered the child to be removed to a foster home, to address the psychopathological development of the child through psychotherapy. Less than a year later, based on a report by the social services stating the improved conditions of the child and the family, the Rome district court ordered the child to return to the mother's home and to conduct meetings with the father, whose relationship with the child had improved significantly. The applicant (the father of the minor) complained that the Italian authorities had not taken all necessary positive steps to ensure the effective enjoyment of his visitation rights, which had been granted various times by the courts. The ECtHR recalled that art. 8 ECHR does not simply aim to prevent arbitrary interference with a person's family life, but also imposes positive duties on the State. In this context, this consists of facilitating contact between parents and children to maintain family bonds (*Bondavalli v. Italy*, No. 35532/12, 17 November 2015, see *Yearbook 2016*, p. 265) taking all necessary preparatory steps to fulfil this aim (*Nuutinen v. Finland*, No. 32842/96, 27 June 2000; *Ignaccolo-Zenide v. Romania*, No. 31679/96, 25 January 2000; *Sylvester v. Austria*, Nos. 36812/97 and 40104/98, 24 April 2003). The Court also emphasised how important timely acting was in these cases, considering the effect that the lack of a timely decision can have on the child/parent relationship (*Piazzi v. Italy*, No. 36168/09, 2 November 2010, see *Yearbook 2011*, p. 310). The Court observed that the applicant had been repeatedly asking to be able to exercise his right to visit his son since 2010 (when the child was two years old), a right which had been recognised to him through court judgments on many occasions, although he had had extremely limited opportunities to enjoy that right due to the mother's opposition and subsequently also the refusal of the child himself. This failure to enjoy his visi-

tation rights had been reported many times to the judicial authorities, both by the applicant and by the social services. Furthermore, in 2016, the Juvenile Court of Rome, following a report requested by the Court, ordered the child to be taken into the custody of social services. The Court stressed that for six years, the applicant was not able to exercise his right to visit his son, despite having this right recognised numerous times, due in part to procedural delays. The Court recalled that the strained relationship between the parents does not exempt the national authorities from taking all appropriate steps to create the conditions necessary for the applicant to fully enjoy his visitation rights (*Bondavalli*, cited above; *Macready v. the Czech Republic*, 4824/06 and 15512/08, 22 April 2010, *Strumia v. Italy,* 53377/13, 23 June 2016, see *Yearbook 2017*, p. 313). Therefore, the Court concluded that the Italian authorities had failed to take concrete and useful steps to facilitate effective contact between the applicant and his son, in violation of art. 8 ECHR. The Italian Government was ordered to pay €10,000 compensation in respect of non-pecuniary damage and €5,000 in respect of costs and expenses.

V Freedom of Expression

In the *Magosso and Brindani v. Italy* case (No. 59347/11) with judgment of 16 January 2020, the ECtHR ruled on the alleged violation of freedom of expression pursuant to art. 10 ECHR of the two applicants, who had been charged with financial and criminal sanctions under art. 57 of the Criminal Code, which regulates crimes committed in print. The two applicants were a journalist and a publishing director who respectively wrote and published an article concerning the murder of the journalist Walter Tobagi. The applicants claimed that their right to inform had been violated, given that the article was related to an issue of public interest. The main bulk of the art. reported an interview with a former brigadier with the anti-terrorist branch of the Milan *carabinieri* and quoted another former *carabinieri*, General N.B who assisted General Dalla Chiesa. According to these interviews, the killing of Walter Tobagi could have been avoided as, before his death, the *carabinieri* had received information on a planned attack by the Red Brigade targeting the journalist, but that the carabinieri had also failed to act to prevent the attack due to the influence of the P2 masonic lodge on Italian institutions during the "years of lead" (*anni di piombo)*. Two generals within the *carabinieri* were named in the article, as far as their contribution to this inactivity of the *carabinieri*, and it was these who first brought the case in front of the District Court in Monza. The Court declared the two defendants guilty of defamation through the medium of the press. According to the District Court in Monza, which was then upheld by successive judgments, the content of the art. was defamatory as it did not merely quote the words of the interviewees, but also suggested there was wilful inactivity on the part of two officers without verifying the information before printing it. The Court therefore evaluated whether the interference in the right to freedom of expression was proportionate and whether it had been justified by the Italian authorities for "relevant and sufficient reasons" (*Kapsis and Danikas v. Greece*, No. 52137/12, 19 January 2017). The ECtHR found that the published infor-

mation responded to a public interest and, therefore, that the public had the right to be informed. Furthermore, according to the Court, the art. was not offensive or demeaning (*Radobuljac v. Croatia*, No. 51000/11, 28 June 2016), considering that the main content of the article was interviews that discussed the professional lives of the two *carabinieri* officers and not in private. The Court underlined that it was not only the reputations of the reputations of the two officers that must be counterbalanced with freedom of the the press and public interest, but also the fact that punishing journalists for faithfully reporting statements made by third parties "would seriously hamper the contribution of the press to the the discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so" (*Novaya Gazeta and Milashina v. Russia*, No. 45083/06 of 3 October 2017). Furthermore, the Court noted d that the applicants had produced an exceptionally large number of documents and substantial factual evidence that allowed the version of the article of facts to be considered credible and having a sound factual basis, confirming that they had compiled with the obligation to verify the facts supplied by a third party (*Dyundin v. Russia*, No. 37406/03 of 14 October 2008). In light of these aspects and the severity of the criminal fine that both journalists had been ordered to pay, the Court concluded that the conviction of the applicants had amounted to a disproportionate interference with their right to freedom of expression, which had not been "necessary in a democratic society" and held that Italy would pay 15,000 euros to each applicant with respect to non-pecuniary damage and 3,500 euros jointly with respect to costs and expenses.

VI Right to the Respect of Goods and Private Property

On 16 January 2020, The ECtHR struck out from the role due to amicable settlement pursuant to art. 39 ECHR (the Italian Government offered to pay compensation for pecuniary and non-pecuniary damages suffered) cases *Varanini and De Salvatore* (No. 2555/08), *Guardata and others* (No. 17154/08), *Di Pietro* (No. 40556/09), *Coviello and Carpi* (No. 42852/09), *Tedeschi* (No. 44484/10), *Ungaro and others* (No. 26719/07) and *Marconi* (No. 58047/08). On 30 January 2020, it did the same with the *Cioccoloni* case (No. 26709/15). All applications concerned indirect expropriations and lamented a violation of art. 1, Protocol 1 ECHR.

On 30 January 2020, the ECtHR struck out the cases *Senes* (No. 48365/11) and *Impellizzeri and others* (No. 30742/07) from its list, in which, based on art. 1, Protocol 1 ECHR, the applicants complained about the amount of the compensation received from expropriation, based on the criteria laid out in law No. 359 of 1992). All cases were resolved by amicable settlement, as per art. 39 ECHR.

In the *Ghetti and others* case (No. 4745/03), concluded with a judgment of 3 March 2020, the applicants complained of a violation of art. 1, Protocol 1 ECHR. According to the applicants, the expropriation of their land had not been conducted in accordance with the law or for any public interest reason. The applicants claimed that the public construction work (given as the reason

for the expropriation) had never been completed and a shopping centre, entrusted to private companies, had been planned in its place. The applicants argued that this change meant that there had been no public interest underlying the taking of their property. First, the ECtHR noted that the expropriate declaration and procedure had been lawful. Concerning the public interest aspect of this case, the Court recalled that the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest, that the notion of "public interest" is necessarily extensive (*James and others v. United Kingdom*, Nos. 7601/76 and 7806/77, 21 February 1986) and that Member States enjoy an ample margin of appreciation in this field (*Elia S.R.L. v. Italy, No.* 37710/97, 2 August 2001; *Sporrong and* Lönnroth *v. Sweden,* Nos. 7151/75 and 7152/75, 23 September 1982). In the case at hand, the Court noted that the construction of a school (the original cause for expropriation) was clearly in the public interest, adding however that the construction of a shopping centre could also have a public function. Furthermore, the Court declared that the change in the plans for the use of that terrain had been justified in a report by the Municipality of Forlì, which stated that a change in the demographics of the territory meant that a school complex was no longer necessary. For these reasons, and given the ample discretion that States enjoy in this field, the Court concluded that the expropriation could be considered to have been conducted in the public interest. Therefore, the complaint was declared inadmissible as manifestly ill-founded according to art. 35 ECHR.

On 21 April 2020, the ECtHR ruled on the *Chino* case (No. 51886/12). The applicant claimed that the confiscation of the apartment in which she lived with her partner (who had been arrested for mafia-style association and other crimes) and their two children had violated her right to respect her private property (pursuant to art. 1 protocol 1) and that the legal proceedings leading to that confiscation had been unjust (pursuant to Art. 6 ECHR). The Italian authorities carried out a pre-emptive seizure of the applicant's property under art. 2-*ter* of law No. 575/1965, as neither she nor her partner was receiving a wage at that moment, and as the applicant had not produced evidence that the property had been bought with any money other than the funds provided by her partner's illegal activities. Therefore, the ECtHR held that, considering that the preventative measure had been carried out pursuant to art. 2-*ter* of law No. 575/1965, the aim of the confiscation was to "prevent the illegal and dangerous use of a property for society, for which the legal origin cannot be proven". The ECtHR concluded that the interference was intended to fulfil a general interest for society and that, considering the policy framework against organised crime, the confiscation was not disproportionate. With reference to the alleged violation of art. 6 ECHR, the Court declared that the applicant had had the possibility to provide evidence in three levels of judgment and that the conclusions of the Courts were not arbitrary judgments, but rather were based on in-depth analyses of the financial situation of both the applicant and her partner and of their personal dealings. Therefore, the Court declared the complaint inadmissible and manifestly ill-founded pursuant to art. 35 ECHR.

On 16 May 2020, the ECtHR decided to strike out the *Fiore* case (No. 20956/08) from its list which had been presented under art. 1 Protocol 1 ECHR on loss of property, due to a friendly settlement pursuant to art. 39 ECHR.

With the decision *Guiso-Gallisai and others v. Italy* (No. 95/06 of 9 July 2020), the ECtHR declared an appeal on the alleged violation of art. 1 of Protocol No. 1 ECHR by the Italian State is inadmissible. The case was born out of an expropriation carried out by the Municipality of Nuoro, following which there was a long, drawn-out litigation culminating in a Council of State judgment. This ruling recognised that the applicants had been illegally deprived of their property and ordered the Italian authorities to pay them compensation. A 20% tax, deducted at the source, was then applied to this compensation. The applicants challenged this levy, considering it "confiscatory taxation", taking the case in front of the European Court. However, the ECtHR maintained that this levy was "balanced" and that it had impaired the financial situation of the applicants (see NKM v. Hungary, No. 66529/11 of 14 May 2013). Consequently, and bearing in mind that Member States have ample discretion in the field of taxation, the ECtHR concluded that the levy on the compensation granted to the applicants had not upset the balance between the protection of the applicants' rights and the public interest to ensure tax payments.

With the decision *Reale and others v. Italy* (No. 16430/13) of 8 October 2020, the ECtHR declared an appeal regarding the alleged violation of art. 1 of Protocol No. 1 ECHR by the Italian State is inadmissible. The applicants, landowners in the Municipality of Rovigo, challenged repeated declarations of expropriation of their land. After exhausting all domestic remedies to get compensation, they brought the case before the ECtHR. The Court, after reiterating that it was the duty of national courts to apply domestic law (*Verga and Cannarella v. Italy*, No. 20984/08 of 15 November 2016), addresses the issue of verifying if there is a fair balance between demands of general interest and the need to protect the fundamental rights of the individual (*Cooperativa La Laurentina v. Italy,* No. 23529/94, 2 August 2001; *Scagliarini and others v. Italy*, No. 56449/07, 3 March 2015, see *Yearbook 2016*, p. 260). However, in the opinion of the Court, the effects of the declarations of expropriation are "not comparable to a privation of property", given that the applicants had neither lost access nor management of their land. Therefore, the ECtHR declared the case inadmissible.

VII Right to Education

In the *G.L. v. Italy* case (No. 59751/15) with judgment of 10 September 2020, the ECtHR ruled on the alleged discrimination against the applicant due to her disability and the failure of the Italian authorities in their positive obligation to ensure equal opportunities for persons with disabilities. The applicant, a child who suffers from non-verbal autism, complained that, despite multiple requests by her parents, she was not able to receive the specialised assistance for her first years of primary school provided for by art. 13 of law No. 104 of

1992. This law aims at ensuring, *inter alia,* autonomy, communication skills, and educational integration for persons with disabilities. According to the Government's submission, the refusal to provide this service was due to a statutory budget cut that year. The Court recognised that the right to education is fundamental for the enjoyment of human rights (*Velyo Velev v. Bulgaria,* No. 16032/07, 27 May 2014) and that education is "one of the most important public services in a modern State. Moreover, it recognised that education is an activity that is complex to organise and expensive to run, whereas the resources that the authorities can devote to it are necessarily finite." However, it recalled that when "a restriction of fundamental rights" is applied to a vulnerable group of persons who have previously suffered "significant discrimination, the State's margin of appreciation is significantly reduced, and serious considerations must be taken to induce it to apply the restrictions in question". Regarding the substance of the case, the Court took into consideration that the national authorities had not given any justification other than budgetary restrictions and had declared that with the available funds, some specialised assistance had been put in place for the applicant, without, however, providing any information about whether the staff members who were carrying out this assistance had the specific skills needed to guarantee the service. Therefore, the Court took the view that the applicant had effectively not been able to benefit from the educational services on an equal basis with the other pupils and that this difference was due to her disability. Regarding the procedural aspect of this case, the Court found that administrative courts had not verified whether the budgetary restrictions relied on by the administration had had the same impact on the provision of education for non-disabled children as for children with disabilities. Therefore, the Court noted that the authorities had never considered the possibility that a lack of resources could be compensated for by a reduction in the overall educational provision, so that it would be distributed equally between non-disabled and disabled pupils. Therefore, the ECtHR concluded that the Italian authorities had not taken the appropriate due diligence measures to allow the applicant to attend primary school on an equal standing to her peers, without imposing a disproportionate or undue burden on the school administration. The Court further noted that the discrimination suffered by the young girl was even more serious since it had occurred in the context of primary education, which formed the foundation of child education and social integration, giving children their first experience of living together in a community. Therefore, the Court found a violation of art. 14 ECHR in combination with the provisions of art. 2 of Protocol 1. The Italian Government was therefore ordered to pay the sum of 2,520 euros in respect of pecuniary damage, €10,000 in respect of non-pecuniary damage and 4,175 euros for costs and expenses.

Italy in the Case Law of the Court of Justice of the European Union*

I The Impact of the COVID-19 Pandemic on the Italian Legal System

A Justice of the Peace of Lanciano requested a preliminary ruling from the CJEU in reference to the initial measures adopted by the Italian Government, in particular the deliberation of the Council of Ministers of 31 January 2020 declaring a national state of emergency and l.d. 18/2020 laying out (among other things) the shutdown of all judicial activities at a national level. In the Court's opinion, which established the referral to the CJEU for road incident claims proceedings, these measures would have seriously limited civil and criminal judicial activity, given that at that time the state of judicial administration made it impossible to use online tools to faithfully conduct hearings. Forcing the referral of various hearings and other legal obligations would cause cases to have unreasonable durations under the requirements of a fair trial; therefore, these measures affected the dignity and independence of the judicial office and undermine the rights concerning judicial activity. The provisions of EU law which prove incompatible with the current emergency legal framework are articles 2, 4(3), 6(1), and 9 TEU; articles 67, 81, 82 TFEU and articles 1, 6, 20, 21, 31, 34, 45, 47 CFR. The Court (C-220/20 case, *XX v. OO*, ord. 10 December 2020) declared the request for a preliminary ruling manifestly inadmissible. The arguments presented by the referral Court had a tenuous link with the main proceedings and constituted a rather severe, yet generalised denunciation of the administration of justice in Italy, exacerbated by the COVID-19 pandemic. The link between the questions raised and the competences of EU law was conducted in such a way as to warrant a CJEU judgement. The fact that ample space is given to the claims of the referring judge in the Court ruling can be construed as the intention of the CJEU to highlight his conduct as a symptom of the serious problems that characterise the Italian justice system, which must be tackled with appropriate measures.

II Workplace discrimination

The CJEU was requested by the Court of Cassation and the Sardinia Regional Administrative Court to rule on two prejudicial questions on the scope of the

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Council Directive 2000/78/CE of 27 November 2000 (general framework for equal treatment in employment and occupation), whose purpose is "to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age, or sexual orientation as regards employment and occupation, in order to put into effect in the Member States the principle of equal treatment" (art. 1).

In the first case (case C-507/18, *NH v. Associazione Avvocatura per i diritti LGBTI - Rete Lenford*, judgment 23 April 2020), the incident that led to the clarification request in front of the CJEU concerned statements made during a popular radio show by a prominent lawyer and former politician, Carlo Taormina. Using a strong and offensive tone of voice, the lawyer declared that he would never hire homosexuals in his legal firm. The association *Avvocatura per i diritti LGBTI - Rete Lenford* brought the case in front of the court claiming damages for these statements, considering it a case of workplace discrimination based on sexual orientation (prohibited by the aforementioned Directive, transposed in Italy with lgs.d. 216/2003). The directive states that action against discriminatory behaviour can also be brought in court by organizations that represent the injured party. Taormina was ordered to pay compensation both by the Court of First Instance and by the Court of Appeal. However, the Court of Cassation doubts the compliance of these decisions with EU law, as it seems to have punished the expression of an opinion and not an identifiable case of workplace discrimination; on this point, the CJEU is requested to provide a preliminary ruling. The Court draws up an interpretation of Directive 2000/78 which firstly does not impede any association which represents the interests of groups and potential victims of discrimination based on sexual orientation to bring legal proceedings for the enforcement of obligations under that directive, as foreseen in the transposed law (and is also provided for by lgs.d. 216/2003). Furthermore, with regard to the substance of the case, the CJEU considered that the opinions made by the lawyer, even though not in reference to a specific recruitment procedure and expressed outside his professional circle (during a popular radio show), could influence the recruitment procedures of professionals in both his and other legal firms, and could cause LGBT+ candidates not to apply. This behaviour therefore could have a negative impact on equal access to work and occupation, which is the aim of Directive 2000/78.

The second judgment (case C-670/18, *CO v. Municipality of Gesturi*, judgment 2 April 2020), requested by the Sardinia Regional Administrative Court, concerns a case of discrimination on the grounds of age. Italian legislation (l.d. 95/2012 and successive amendments) establishes that Italian public entities cannot outsource analysis or consultancy roles to persons in retirement. A doctor was selected for this type of role by the Sardinian Municipality and had all necessary qualifications, but was denied the role because he was already taking his pension. The CJEU was called on to decide whether this interpretation of Italian law constituted unequal treatment based on age, considering articles 15 (Freedom to choose an occupation and right to engage in work) and 25 (rights of the elderly) CFR. According to the CJEU, the Italian law constitutes indirect discrimination as referring to retirement is an implicit way to use a person's age negatively in access to employment.

On the other hand, the objective of this limit within Italian could make it justifiable, if it aims at promoting the access of younger people to the civil service (although it is important to bear in mind that extensive experience is needed to carry out certain, more complex consultation roles) and following budgetary constraints (some roles given to retired persons can (in some cases) be assigned without foreseeing any remuneration). In conclusion, it is the duty of the Italian Court to determine whether, in the case in hand, the applicant falls within this category and, therefore, to only disapply the regulation if the criteria laid out in national law are not satisfied.

III Right to Paid Holidays for Justices of the Peace

The CJEU (case C-658/18, *UX v. Government of the Republic of Italy*, judgment 16 July 2020) ruled on an issue that saw the Ministry of Justice against a Justice of the Peace of Bologna, an issue that, however, concerns all Italian Justices of the Peace. The dispute related to the recognition of the right to paid annual leave for this category of magistrate, as provided by art. 31(2) CFR for all workers. Under current Italian law (law 374/1991, which was substantially reformed to the benefit of Justices of the Peace with lgs.d. 116/2017), during the summer recess (in which judicial activities are suspended) Justices of the Peace receive no wages, since their remuneration is strictly tied to the decisions taken and to the number of hearings that have taken place. On the contrary, ordinary judges enjoy the right to 30 days of paid annual leave. The applicant considered that this treatment violated her rights as a worker as defined by Directives 2003/88/EC and 1999/70/EC and claimed compensation of one month's pay for untaken holiday for 2018 (a total of €4,800 based on the rate of pay for ordinary judges) from the Italian State. The Court recognised her right; however, the Court of Cassation deemed it necessary to refer the issue to the CJEU for a preliminary ruling on the compatibility of Italian law and EU law on this issue. The judgment of the CJEU substantially recognised the reasoning of the applicant, therefore, creating a basis for a possible further reform of national law that could be more favourable for honorary judges. Even though the law makes reference to an "honorary" role and excludes this position from the public sector, the CJEU considered that the work of the Justices of the Peace corresponds substantially to a form of employment, since, according to EU law, any person who undertakes genuine and effective work, not marginal or ancillary, for which they receive compensation representing remuneration. Honorary judges are subject to the supervision of the same judicial bodies as ordinary judges and therefore have the status of subordinate workers – which does not stop the same requirements of independence that apply to all other magistrates also being applied to them. The only difference in the roles lies with the selection process: for ordinary judges, there is an open competition. Furthermore, Justices of the Peace have fixed-term contracts since they are appointed for a four-year mandate with the possibility of renewal. In the opinion of the CJEU, from these observations, it follows that the regulation excluding the right the paid leave (recognised for ordinary magistrates) seems to be contrary to EU law, unless the judge of the specific case establishes different requirements for the role of Justice of

the Peace that differ enough from those of an ordinary judge to justify this unequal treatment.

IV Family Benefits for non-EU Workers with a Long-term Residence Permit

The Court of Cassation presented a question to the CJEU for a preliminary rule concerning the interpretation of an article of Council Directive 2003/109/EC of 25 November 2003 about the status of third-country nationals who are long-term residents. Art. 11 of this directive establishes that a third-country national (who is a long-term resident of the country) enjoys equality of treatment with citizens of the Member State in relation to, among other things, social assistance and healthcare. In Italy, these include a family allowance (introduced by law 153/1988) proportional to the family's income and the number of family members dependent on the worker. However, according to the National Institute of Social Security (INPS), family allowances must be suspended if the family members of the non-EU citizen reside abroad for a considerable period of time. However, this regulation does not apply if the person receiving the family allowance is an Italian citizen: for Italian citizens, INPS does not require family members to reside in Italy. The case in question refers to a Pakistani worker whose family allowance was refused between 2011 and 2014, when his family members (wife and five children) resided in Pakistan and not in Italy. Therefore, the question submitted to the CJEU concerned the compatibility of this Italian law with the principle of equal treatment between EU workers and third-country nationals with long-term residence permits, as established by Directive 2003/109. According to the CJEU (case C-303/19, *INPS v. VR,* judgment 25 November 2020), since Italy did not clearly indicate any restriction on the applicability of the directive, all interpretations of the existing law that prevents the integration of third-country nationals (which is the aim of the directive), such as the reduction of family allowances in the event of temporary absence of family members from Italy, must be considered incompatible with EU law.

V Agency Work

The Court of Cassation doubts the compatibility of Italian law regulating contracts for agency work (introduced by lgs.d. 276/2003, the so-called "Biagi reform", as successively amended (from 2014 onwards) by measures laid out in the so-called "Jobs Act") of the European Parliament and of the Council on temporary agency work. The question was about a temporary worker who, for two years from 2014 to 2016, had consistently worked via successive "assignments" at the same company, at the end of which he expected to be hired under a permanent contract. According to the opinion of the judges' ruling on the case, Italian law allows for both the repetition and the extension of temporary work contracts, while containing regulations against their misuse. Moreover, the Civil Code punishes the use of contracts that attempt to circumvent the application of this regulation by declaring the contract null and void. If, however, an employer can justify (without necessarily specifying the reason) the renewal of temporary contracts by technical, production,

organisation, or replacement-related reasons, the number of contract renewals for the same worker is not limited. This law therefore seems to be in contrast with the European Directive, which aims to protect workers within temporary agency work with respect to art. 31 CFR, which lays out, in a general sense, the right of every worker to working conditions which respect their health, safety, and dignity. The CJEU (C-681/18 case, *JH v. KG*, judgment 14 October 2020) observed that the EU has limited competences on "labour conditions"; these broadly remain within the scope of the Member States. The balance struck by that directive between flexibility for employers and security for workers requires Member States to make repeated renewals of agency worker "assignments" at the same user undertaking possible, subject to the prerequisite of production needs, without the changing the employment relationship from temporary to permanent, except naturally when this translates as a misuse of the system. It follows therefore that the Italian law, which does not impose limits on the number of successive assignments (but that opposes the misuse of such practices) are compatible with Directive 2008/104.

On the issue of employment, it is worth noting the order (case C-32/20, *TJ v. Balga S.R.L.*, ord. 4 June 2020) with which the CJEU dismissed the application for a preliminary hearing from the District Court in Naples concerning a case of collective dismissal. The Italian Court requested clarification on whether regulations on redundancy foreseen by the "Jobs Act" (lgs.d. 23/2015) was in line with EU law under art. 30 CFR (protection in case of dismissal), read alongside art. 24 of the European Social Charter. The requesting Court focused on the unequal treatment among workers facing dismissal who had been hired before 2015 (to whom previous legislation should be applied which would foresee, among other things, reinstatement into the workplace following unfair dismissal) and those who were hired after the entry into force of lgs.d. 32/2015 (who, in the case of unfair dismissal, could only be entitled to receive compensation of up to a maximum of 36 months of pay, depending on the length of service. The CJEU declared that the issue was not within its scope. Despite the fact that the CFR mentions the issue of protecting workers in cases of dismissal, EU law has not placed any specific obligations in this area on Member States. Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies only regulates the way in which collective dismissals can be conducted after adequate consultation with all parties and involving the public authorities, but the Directive does not go into the consequences of unfair collective dismissal. The question of unequal treatment between workers hired before or after 2015 also cannot be tackled, as the main proceedings only concerned one person hired after 2015 and, therefore, any discrimination was merely hypothetical.

VI Compensation for Victims of Crime

With a major decision on a preliminary ruling (case C-129/19, *The Prime Minister's Office* ***v.*** *BV*, judgment 16 July 2020), the CJEU sets out a series of standards which are valid within Italian law on the application of Directive 2004/80 concerning compensation for victims of crime. (On the application of the CJEU decision in the present case by the Court of Cassation, see in this Part, XIII D).

The aim of the directive is to guarantee the freedom of any individual to go to another Member State and find the same level of protection from harm as a citizen or resident of

the Member State in question and, to this end, to facilitate compensation to victims of cross-border crimes. In other words, victims of crime must have the right to receive fair and appropriate compensation for the injuries they have suffered, regardless of where in the European Community the crime was committed. Naturally, a problem arises when the offender lacks the necessary means to satisfy a judgment on damages to the victim. In this case, the Member State should step in, with a system of cooperation which works effectively and in the same way in all EU States. Italy implemented this directive with a guilty delay, by law 122/2016 (European law 2015-16), retroactively applicable from 2005 and regardless of whether the victims reside in Italy. The case that brought about this preliminary ruling is described in Part IV, 1.13.4. The CJEU stated that the directive had effectively established a system that gave victims of violent intentional crimes, including sexual assault, the right to compensation for damages caused by that crime, regardless of the nationality or residence of either the victim or the offender. Alongside this right, the Member State has a duty to provide a scheme of appropriate compensation. It is true that in previous decisions, the CJEU cited this State duty in relation to cross-border crimes, though this does not prevent the principle from being applied to crimes committed against citizens of the State, as in the case in question. The amount of compensation that the State must pay a victim (if the offender lacks the necessary economic means to satisfy a judgment), can also be a fixed or flat-rate sum, given that the directive does not give any detailed rules on this amount: however, it must be an appropriate amount to compensate for the damages suffered. For sexual violence (presented in the first instance by the Italian courts), the CJEU regarded the compensation payment of €4,800 as manifestly insufficient (on the outcome of the case within the Italian justice system, see above, Part IV, 1.13.4).

VII Access to the CJEU against the Extension of the Use of Glyphosate in Agriculture

On 12 December 2017, the Commission adopted the EU Implementing Regulation (EU) 2017/2324 that renews the approval of the active substance glyphosate in certain circumstances until 25 December 2022, permitting States to allow the use of these plant protection products in agricultural production. The use of glyphosate is protested by various environmental and consumer protection associations as it is considered dangerous to human health. One of these is the Italian association GranoSalus, with headquarters in Foggia, which filed an appeal against the EU on the basis of art. 47 CFR (right to an effective remedy) and art. 263(4) TFEU ("any natural or legal person may (…) institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures"). The appeal was ruled inadmissible (case 313/19 P, *Associazione Nazionale GranoSalus - Liberi Cerealicoltori & Consumatori (Associazione GranoSalus) v. European Commission*, judgment 28 October 2020). The contested act produces no immediate effect by itself and requires national implementation acts for any effect to take place. This does not mean that for an organisation such as GranoSalus (which is not a production firm and therefore does not commercialise or use plant protection products), cannot change the EU regulation, however, that the act must have a direct effect

on the interests of one or more of their members. This is not the case, as it is ultimately up to the single Member States to use or place glyphosate on the market, and therefore it will be necessary to challenge the States directly to prevent the use of this substance in agriculture, not the EU regulation that authorises its implementation.

VIII Waste Management

The application of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste has caused controversy due to its impact on a series of fundamental rights of EU citizens, particularly the right to health, the right to a private life and, naturally, the right to a healthy environment pursuant to art. 37 CFR. The CJEU ruled on a prejudicial issue raised by the Court of Cassation during a proceeding between the AMA company that ran the urban waste service for the Municipality of Rome (which is responsible for the city waste collection and disposal system), and the Lazio Waste Syndicate (*Consorzio Laziale Rifiuti* - Co.La.Ri.), which managed the Malagrotta landfill site (one of the biggest in Europe) until its closure in 2013. Directive 1999/31 was transposed into Italian law with legislative decree 36/2003. This regulates the ways in which waste treatment and disposal must be conducted; in particular, it sets out the principle that waste management systems must include the closure and after-care of the site for a period of at least 30 years. The regulations apply to all permits already ongoing in 2001 (the year that the directive was to be considered effective) including therefore the agreement between AMA and Co.La.Ri., despite the fact that the agreement made before the regulation entered into force (and before the legislative decree in 2003) set out only 10 years. Therefore, applying these regulations involved a forced extension of the agreement with an additional burden on the "holder" (the entity that produces the waste, in this case the Municipality of Rome) of more than 75 million euros. This outcome was contested by AMA, who claimed that the "retroactive" application of the directive (and the decree transposing it into Italian law) was illegitimate and, if found legitimate, the thirty-year extension of the contract that it introduced (and all financial burdens that came with it) should only cover waste management from after 2001. The CJEU (C-15/19 case, judgment 14 May 2020, judgment *AMA v. Co.La.Ri*) upheld that Directive 1999/31 was inspired by the "Polluter Pays" principle and obliges the entity that generates waste to make provisions for the whole cycle of waste management. If this occurs through the landfill, the aftercare phase following the closure of a site must be carefully managed. It is essential to monitor and address any environmental or health risks linked to polluting substances that can produce long-term negative effects in the surrounding area. 30 years were deemed an appropriate time period for this aftercare phase, during which the managing entity must work toward full closure of the site. The Directive was applied to all waste management contracts active from its entry into force – including the contract for the Malagrotta site. Therefore, the application of the Directive was not retroactive. An interpretation that would limit its effects to those conferred after 2001 is not compatible with the objectives of the Directive, as it must guarantee the safety of the entire system (including

the older parts). AMA therefore must respect the contract as it has been integrated (and undoubtedly made more costly) by the reform introduced by the Directive and its successive (late) transposition into Italian law.

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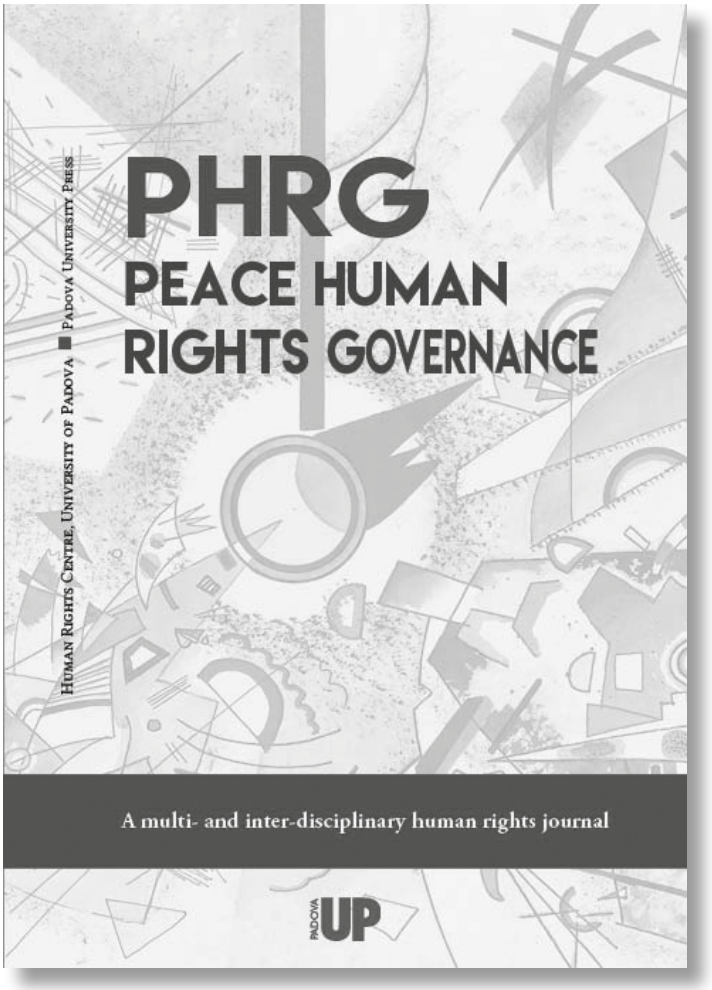

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Printed by Padova University Press in July 2022

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The *Yearbook* is edited by the University of Padova Human Rights Centre, in cooperation with the UNESCO Chair in Human Rights, Democracy and Peace of the same University.

ISBN 9788869383076

€ 15,00