



Human Right Studies



ITALIAN YEARBOOK OF HUMAN RIGHTS 2014



P.I.E. Peter Lang

The *Italian Yearbook of Human Rights 2014*, the fourth in the series, provides a dynamic and up-to-date overview of the measures Italy has taken to adapt its legislation and policies to international human rights law and to comply with commitments voluntarily assumed by the Italian Government at the international level.

The 2014 *Yearbook* surveys the activities of the relevant national and local Italian actors, including governmental bodies, civil society organisations and universities. It also presents reports and recommendations that have been addressed to Italy by international monitoring bodies within the framework of the United Nations, the Council of Europe and the European Union. Finally, the *Yearbook* provides a selection of international and national case-law that casts light on Italy's position *vis-à-vis* internationally recognised human rights.

"Italy and human rights in 2013: the challenges of social justice and the right to peace" is the focus of the introductory section of the *Yearbook*. With a view on the second Universal Periodic Review of Italy before the Human Rights Council, the Italian Agenda of Human Rights 2014, intended to be an orientation tool with regards to immediate and long-term measures that should be taken to ensure human rights for all in the Country, is integrated by an analysis of the status of implementation of the recommendations made to Italy during the first Universal Periodic Review (2010).

The *Yearbook* is edited by the University Human Rights Centre of the University of Padua, in cooperation with the UNESCO Chair in Human Rights, Democracy and Peace of the same University. The Centre, established in 1982 with the support of the Region of Veneto, carries out research and education following a global and interdisciplinary approach. It hosts the Jean Monnet Centre of Excellence on intercultural dialogue, human rights and multi-level governance.

The editors of the *Italian Yearbook of Human Rights 2014* include: Andrea Cofelice, Pietro de Perini, Paolo De Stefani, Marco Mascia, Antonio Papisca (director) and Claudia Pividori.

P.I.E. Peter Lang
Brussels



Human Right Studies

www.peterlang.com

Italian Yearbook of Human Rights 2014



P.I.E. Peter Lang

Bruxelles · Bern · Berlin · Frankfurt am Main · New York · Oxford · Wien

Director

Antonio Papisca

Research and editorial committee

Andrea Cofelice, Pietro de Perini,
Paolo De Stefani,

Marco Mascia, Antonio Papisca, Claudia Pividori

Editors

University Human Rights Centre
University of Padua
via Martiri della Libertà, 2
35137 Padua

tel. 049.8271817; fax 049.8271816

centro.dirittiumani@unipd.it
www.italianhumanrightsyarbook.eu
<http://unipd-centrodirittiumani.it/en/>

Italian Yearbook of Human Rights 2014

Italian Yearbook of Human Rights Studies



UNIVERSITÀ
DEGLI STUDI
DI PADOVA

HUMAN
RIGHTS
CENTRE



UNESCO Chair
Human Rights, Democracy and Peace



REGIONE DEL VENETO

A R C H I V I O
PACE DIRITTI UMANI
peace human rights

Cover picture: © *The ideal city (interpolation)*, 2011, Venezia, Marsilio Editori.

First Italian edition: *Annuario italiano dei diritti umani 2014*, Venezia, Marsilio Editori, 2014.

No part of this book may be reproduced in any form, by print, photocopy, microfilm or any other means, without prior written permission from the publisher. All rights reserved.

© P.I.E. PETER LANG S.A.

Éditions scientifiques internationales

Brussels, 2014

1 avenue Maurice, B-1050 Bruxelles, Belgique

info@peterlang.com ; www.peterlang.com

ISSN 1781-3867

ISBN 978-2-87574-217-9 (print)

ISBN 978-3-0352-6482-1 (eBook)

D/2014/5678/

Printed in Germany

CIP available from the British Library, GB and the Library of Congress, USA.

Bibliographic information published by "Die Deutsche Nationalbibliothek"

"Die Deutsche Nationalbibliothek" lists this publication in the "Deutsche Nationalbibliografie"; detailed bibliographic data is available in the Internet at <http://dnb.d-nb.de>.

Table of Contents

List of Acronyms	11
-------------------------------	-----------

Italy and Human Rights in 2013: the Challenges of Social Justice and the Right to Peace.....	15
---	-----------

I. Regulatory and Infrastructural Human Rights Situation	22
II. Implementation of International Obligations and Commitments: Implementation of ECtHR Case-law	26
III. Adoption and Implementation of Policies	27
IV. Structure of the 2014 Yearbook	31

UPR: Towards the Second Cycle of the Universal Periodic Review	35
---	-----------

Italian Agenda of Human Rights 2014	41
--	-----------

PART I. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS LAW IN ITALY

International Human Rights Law	49
---	-----------

I. Legal Instruments of the United Nations.....	49
II. Legal Instruments on Disarmament and Non-proliferation.....	49
III. Legal Instruments of the Council of Europe	50
IV. European Union Law	50

Italian Law.....	55
-------------------------	-----------

I. The Constitution of the Italian Republic	55
II. National Legislation	55
III. Municipal, Provincial and Regional Statutes	58
IV. Regional Laws	59

PART II. THE HUMAN RIGHTS INFRASTRUCTURE IN ITALY

National Bodies with Jurisdiction over Human Rights	69
--	-----------

I. Parliamentary Bodies.....	70
II. Prime Minister's Office (Presidency).....	95
III. Ministry of Foreign Affairs.....	101
IV. Ministry of Labour and Social Policies	105
V. Ministry of Justice	109

VI. Judicial Authorities	110
VII. National Economy and Labour Council (CNEL)	110
VIII. Independent Authorities	111
IX. Non-governmental Organisations	119
X. Human Rights Teaching and Research in Italian Universities	120
Sub-national Human Rights Structures	131
I. Peace Human Rights Offices in Municipalities, Provinces and Regions	131
II. Ombudspersons in the Italian Regions and Provinces	132
III. National Coordinating Body of Ombudspersons	136
IV. Network of Ombudspersons for Children and Adolescents	137
V. National Coordinating Network of Ombudspersons for the Rights of Detainees	138
VI. National Coordinating Body of Local Authorities for Peace and Human Rights	139
VII. Archives and Other Regional Projects for the Promotion of a Culture of Peace and Human Rights	140
Region of Veneto	143
I. Regional Department for International Relations	144
II. Committee for Human Rights and the Culture of Peace	144
III. Committee for Development Cooperation	146
IV. Regional Archive “Pace Diritti Umani – Peace Human Rights”	146
V. Venice for Peace Research Foundation	148
VI. Ombudsperson for Children and Adolescents	148
VII. Ombudsperson	150
VIII. Regional Commission for Equal Opportunities between Men and Women	152
IX. Regional Observatory on Social Policies	152
X. Regional Observatory on Immigration	154
 PART III. ITALY IN DIALOGUE WITH INTERNATIONAL HUMAN RIGHTS INSTITUTIONS	
The United Nations System	159
I. General Assembly	159
II. Human Rights Council	168
III. High Commissioner for Human Rights (OHCHR)	192

IV. High Commissioner for Refugees (UNHCR).....	194
V. Human Rights Treaty Bodies.....	198
VI. Specialised United Nations Agencies, Programmes and Funds.....	205
VII. International Organisations with Permanent Observer Status at the General Assembly.....	215
Council of Europe	217
I. Parliamentary Assembly	218
II. Committee of Ministers	221
III. European Court of Human Rights	225
IV. Committee for the Prevention of Torture.....	226
V. European Committee of Social Rights	235
VI. Commissioner for Human Rights	242
VII. European Commission against Racism and Intolerance.....	246
VIII. Advisory Committee on the Framework Convention for the Protection of National Minorities.....	246
IX. European Commission for Democracy through Law	247
X. Group of Experts on Action against Trafficking in Human Beings	250
XI. Group of States against Corruption	252
European Union	255
I. European Parliament.....	255
II. European Commission.....	256
III. Council of the European Union	257
IV. Court of Justice of the European Union	258
V. European External Action Service.....	258
VI. Special Representative for Human Rights	258
VII. Fundamental Rights Agency.....	259
VIII. European Ombudsman	261
IX. European Data Protection Supervisor.....	262
Organisation for Security and Cooperation in Europe	263
I. Office for Democratic Institutions and Human Rights (ODIHR).....	263
II. High Commissioner on National Minorities.....	264
III. OSCE Representative on Freedom of the Media.....	264
IV. Special Representative and Co-ordinator for Combating Trafficking in Human Beings	266

International Humanitarian and Criminal Law	269
I. Adapting to International Humanitarian and Criminal Law	269
II. The Italian Contribution to Peace-keeping and Other International Missions.....	269
 PART IV. NATIONAL AND INTERNATIONAL CASE-LAW	
Human Rights in Italian Case-law	275
I. Dignity of the Person and Principles of Biolaw	275
II. Asylum and International Protection	279
III. Discrimination	283
IV. Rights of Persons with Disabilities.....	283
V. Social Rights.....	287
VI. Laws Affecting Individual Rights with Retroactive Effect	290
VII. Immigration	292
VIII. Right to Privacy, Right to Property.....	298
IX. Children's Rights	300
X. Fair Trial and Pinto Law	303
XI. Torture, Prison Conditions, Rights of Detainees	307
XII. Criminal Matters	309
Italy in the Case-law of the European Court of Human Rights	319
I. Pilot Judgments and Related Cases	319
II. Other Cases Decided by the Chambers and Committees of the Court.....	325
Italy in the Case-law of the Court of Justice of the European Union	335
Legal Approach to the Chairperson-Rapporteur's Draft Declaration in Light of the Current Debate on the Right of Peoples to Peace	341
Index	413
Italian Case-law	419
Research and Editorial Committee	431

List of Acronyms

AGCM	Regulatory Authority for Electricity and Gas (Autorità garante della concorrenza e del mercato)
AGCOM	The Communications Regulatory Authority (Autorità per le garanzie nelle comunicazioni)
ANCI	National Association of Italian Municipalities (Associazione Nazionale dei Comuni Italiani)
C.I.	Constitutional law (Legge costituzionale)
CARA	Reception Centre for Asylum Seekers (Centro di accoglienza per richiedenti asilo)
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CFSP	Common Foreign and Security Policy of the European Union
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CFREU	Charter of Fundamental Rights of the European Union
CFSP	Common Foreign and Security Policy of the European Union
CIDU	Inter-Ministerial Committee for Human Rights (Comitato interministeriale per i diritti umani)
CIE	Identification and Expulsion Centre (Centro di identificazione ed espulsione)
CM	Committee of Ministers of the Council of Europe
CNEL	National Economy and Labour Council (Consiglio nazionale dell'economia e del lavoro)
CoE	Council of Europe
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
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
CSM	National Council of the Judiciary (Consiglio Superiore della Magistratura)
CSDP	Common Security and Defence Policy of the European Union
D.p.c.m.	Decree of the President of the Council of Ministers (Decreto del Presidente del Consiglio dei Ministri)
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
ECJ	Court of Justice of the European Union
ECOSOC	United Nations Economic and Social Council
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
EP	European Parliament
ESC-R	European Social Charter (revised)
EU	European Union
FAO	Food and Agriculture Organisation of the United Nations
FRA	Fundamental Rights Agency of the European Union
GA	General Assembly of the United Nations
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

LGBT/LGBTI	Lesbian, Gay, Bisexual, Transexual (and Intersex)
L.d.	Law-decree (decreto legge)
Lgs.d.	Legislative decree (decreto legislativo)
MIUR	Ministry of Education, University and Research
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental 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
SPRAR	Protection System for Asylum Seekers and Refugees (Sistema di protezione per richiedenti asilo e rifugiati)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN-HABITAT	United Nations Human Settlements Programme
UNACLA	United Nations Advisory Committee of Local Authorities
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)
UNDEF	United Nations Democracy Fund
UNDP	United Nations Development Programme
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees

UNICEF	United Nations Children's Fund
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UPR	Universal Periodic Review
WHO	World Health Organisation

Italy and Human Rights in 2013: the Challenges of Social Justice and the Right to Peace

In autumn 2014, the United Nations Human Rights Council will conduct its second Universal Periodic Review of Italy, primarily in order to ascertain the degree of compliance reached in Italy following the recommendations made during the first round of reviews. The *2014 Yearbook* aims to provide empirical evidence which should prove useful, in addition to supporting the preparation for this operation, in enacting a comprehensive human rights system in Italy which is compliant with the principles and guidelines repeatedly recommended by the United Nations and the Council of Europe. The most important step is to establish the National Human Rights Commission as an independent body for the protection and promotion of fundamental rights. Italy made a commitment to this when putting its own candidature forward for a second mandate as a member of the Human Rights Council. It should be noted that, in the last years, there have been a series of bills *in re*, yet none of them have come to fruition in any way. Meanwhile, the Inter-ministerial Committee for Human Rights at the Ministry of Foreign Affairs has been reconstituted, and this body is charged with operating in the area of governmental functions.

The *2014 Yearbook*, like the previous edition, cannot but report the protracted state of great suffering for rights in Italy, particularly economic and social rights, starting from the right to work and to social security: the general unemployment rate is 13%, and youth unemployment stands at 42.3% (ISTAT data, March 2014).

The woes of social and economic rights are also spreading to the field of civil and political rights, creating difficulties for the very practice of democracy and fanning the fires of corporate egoism, inter-generational conflict, racist sentiment and anachronistic nationalism, as well as heightening the lack of confidence in public institutions at the national, European and international level. Social cohesion and even territorial cohesion are at risk. It is well to recall here just how peremptory are the provisions of the second paragraph of article 20 of the 1966 International Covenant on Civil and Political rights, ratified by Italy in 1977: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

Again, in the previous editions of the Yearbook, emphasis was put on the fact that, in virtue of the principle of the interdependence and indivisibility of all human rights – economic, social, civil, political and

cultural – policies which comply with the requirements of social justice are for all States an obligation, not an *optional* extra; it is reiterated that the social state and the rule of law are two indissociable infrastructural attributes of sustainable statehood. For the Member States of the European Union, this obligation is specifically mentioned in the Treaty of Lisbon, where it establishes that the Union shall work for sustainable development, based, specifically, on “a highly competitive social market economy, aiming at full employment and social progress” (article 3(3)). It should also be remembered that the EU Charter of Fundamental Rights includes civil and political rights as well as economic, social and cultural rights, and that the Lisbon Treaty itself makes specific reference, in its Preamble, to the 1961 European Social Charter and the 1989 Community Charter of the Fundamental Social Rights of Workers.

The *2013 Yearbook* quoted the warning from the United Nations High Commissioner for Human Rights, Navanethem Pillay, “the right to work is a fundamental human right which is inseparable from human dignity”, to make the strongest possible statement that unemployment prevents the full realisation of the person, takes away the sense of ethics of one’s “vocation”, restricts horizons of freedom and the promotion of human dignity, and undermines education and training processes at their roots. It is useful to repeat, *opportune et inopportune*, that a Civilisation of Law comes to fulfilment when, in recognising all the rights relating to human dignity, it meets and espouses the Civilisation of Labour, obliging Governments and the other actors in economic processes to face market challenges with a compass of fundamental rights. These are a series of practical truths – as Jacques Maritain defined them – which predicate their true incarnation on individual and social behaviours, on public policies, on positive measures and on comprehensive investments in education. In other words, they constitute a “political agenda” which feeds into good governance processes in the multi-level *glocal* space which stretches from the town hall to the United Nations.

And so it is necessary, once and for all, to go beyond the limits and determinisms of the pervasive and malignant sub-culture which distinguishes, but in actual fact separates, the subject of fundamental rights from that of political action and decision-making, that is, cutting off the right from the corresponding obligation to implement it.

It should be strongly emphasised here that human rights, in addition to being “the parents of Law”, as Amartya Sen typically argued, are political agenda, the alpha and omega of good governance.

The imperative of good governance is, of course, incumbent on inter-governmental and supranational organisations as well as on States, as they promote international human rights law and monitor its application by all States. However, the issue of monitoring and possibly applying penalties

for the violation of rules is not the sole function of these international institutions. Indeed, they determine and implement veritable Government programmes, which affect a broad range of vitally important sectors. And so, like States, they too are bound to the respect of human rights, the rule of law and democratic principles, setting a good example in pursuing the objectives set by the overarching *human development* and *human security* strategies. For this to happen, it is necessary that the States making up the inter-governmental organisations respect the statutes of the same, and hence fulfil their obligation to make them function effectively, to provide them with the necessary human and financial resources and allow their structure and functioning to be made more democratic. As concerns Italy's responsibilities in this area, article 11 of the Constitution clearly states that: "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".

The dynamics of human rights must be considered not only in a vision of the plurality of its contents in substance, but also in the light of a territorial and functional context which, as previously mentioned, has a global dimension, and wherein the "responsibility to protect" human rights, that is, the commitment to guarantee them, must necessarily be shared between all institutions operating at the various levels from towns up to the highest supranational bodies.

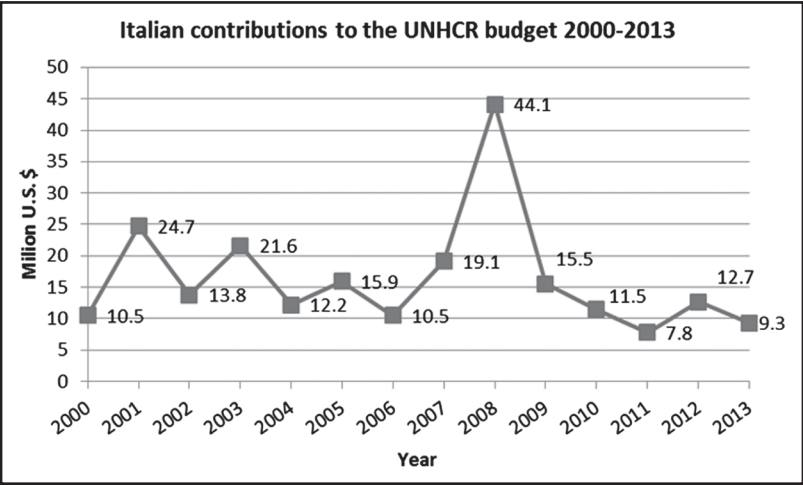
In this respect, it is well to refer back to article 1 of the 1999 United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the *national and international levels (italics added)*. So there are no borders limiting the actions of human rights defenders, be they individuals, associations or local government bodies, the latter in their capacity as "organs of society". One should note that, pursuant to the Italian Constitution, Municipalities and Regions are part of the Republic, not of the State.

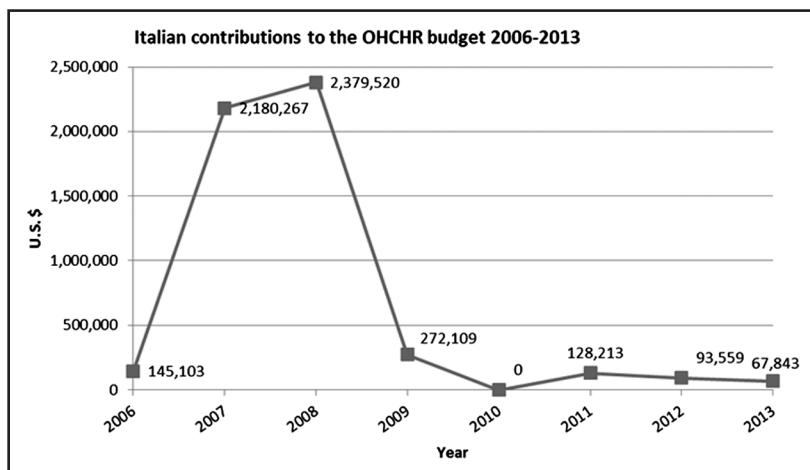
The reference to borderless space for the realisation of human rights calls to mind the model of world order the DNA of which is found in the United Nations Charter and in the Universal Declaration of Human Rights. It is the order of positive peace as defined in article 28 of the Declaration: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized".

It is essential to keep this model in the spotlight, to avoid being paralysed in the situation of liquidity – synonym of precariousness and insecurity – evocatively diagnosed by Zygmunt Baumann with reference to the human condition in the globalised world.

One will realise that not everything is “liquid”. If one knows how to look for it, there is ample empirical evidence of the existence of “solids”, identifiable in the genuine presence of elements of good governance of an infrastructural nature. First of all comes the “normative solid”, constituted specifically by the universal code of human rights and the relative machinery to implement them. Then there is the “organisational solid”, made up of the legitimate international institutions operating at the dual regional and universal level: from the United Nations Organisation to the European Union, from UNESCO and the ILO to the African Union, ASEAN, and the OAS, etc.

These organisations are “common houses” which exist in order to be enjoyed by all members of the human family, and for the proper running of which the member States are responsible. Significantly, the genuine commitment of Governments is measured according to their active participation in the functioning of these organs, but also according to the funds they allocate as their voluntary contributions to the organisations they belong to. In 2013, Italy’s contribution to the Office of the United Nations High Commissioner for Human Rights was approximately \$ 68,000 (ranking it 42nd as a donor), representing a decrease of about \$ 25,000 compared to the previous year (when it was in 40th place). As concerns the budget of the High Commissioner for Refugees, in 2013, Italy contributed \$ 9.3 million, a decrease of about \$ 3.4 million dollars compared to the previous year.





Source: OHCHR, *United Nations Human Rights Appeal* 2014.

In 2013, Italy's participation in the work of the United Nations Human Rights Council was particularly distinguished by the fact that over half of the 95 resolutions adopted by the Council saw Italy's direct participation (as a sponsor) or diplomatic support (as a co-sponsor), and that Italy's position was "winning" in 15 of the 28 votes cast. It is pointed out that two of the four "thematic" resolutions promoted by Italy refer to the contributions of national Parliaments to the completion of the Universal Periodic Review and to the World Programme for human rights education respectively.

In the education field, it should be noted that Italy was an active member of the platform of States which worked for the drafting and approval in 2011 of the United Nations Declaration on Human Rights Education and Training. There is now an expectation that the Italian Government, on the strength of its active role at the world level, should promptly adopt comprehensive plans to develop education in human rights, peace and democratic citizenship for schools at all levels. It is within this area that efforts must finally be made to recapitulate the various rivulets of sectorial education (on sustainable development, citizenship, legality, environment, etc.) around the human rights paradigm. The guidelines for this operation can be found in three fundamental international documents: the Resolution and Programme of Action on a Culture of Peace and Human Rights; the Declaration on Human Rights Education and Training, both from the United Nations, and the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education. In Italy, the Government is expected to feel spurred on in this direction by

the example set by the good number of universities which continue to offer teaching and develop research in the specific field of human rights. Indeed, in 2013 there were 109 units specifically devoted to human rights, taught in 38 different universities. Over half of these units are included in degree courses in the area of politics and social sciences (numbering 61, or 56%), whereas a third are in the Law area (36 units, or 33%); 9 are in the areas of history, philosophy, pedagogy and psychology (8%) and 3 in the area of economics and statistics (3%). Top of the list of universities is the University of Padua with 20 units, followed by the University of Turin with 8. The strong presence of courses in the political and social sciences area is proof that the prevalent approach is decidedly policy and action-oriented, in line with the natural theoretical approach to the subject: or the axio-practical approach.

Since 2012, an inter-governmental working group tasked with drafting a Declaration on the Right to Peace has been operating within the United Nations Human Rights Council. From the outset, carrying out this mandate has proven fraught with difficulties because certain States declared their *a priori* rejection of the draft document being debated. One of their objections is that since current international law does not include a specific right to peace, such a right cannot be introduced by a Declaration. Another objection is that if peace were to be recognised as a fundamental right of the person and of peoples, all formally recognised human rights would be weakened as a consequence. These are clearly spurious arguments. A number of non-governmental organisations with consultative status at ECOSOC are taking an active part in the work of the aforementioned inter-governmental working group and are, as is to be expected, aligned in favour of the initiative. In Italy, the ongoing debate in Geneva has attracted the attention of a number of Municipal Councils, which have included the so-called “peace human rights norm” in their respective Statutes; this norm makes reference to the Italian Constitution and international human rights law to recognise peace as a fundamental right of the person and of peoples. Following a proposal from, and with the support of, the Human Rights Centre of the University of Padua, the Italian Coordination of Local Authorities for Peace and Human Rights asked municipal (and provincial) councils to approve a detailed petitionary motion supporting the initiative of the Human Rights Council. As the current edition of the Yearbook is going to print, there are news that about a hundred Municipal Councils large and small, from the Alps in the north to the southernmost tip of Italy, from east to west, in Sicily and in Sardinia, have approved the motion and are sending a delegation to deliver a copy of each to the Chairperson-Rapporteur of the Working Group, Ambassador Christian Guillermet Fernandez (Costa Rica), to the High Commissioner for Human Rights, Navi Pillay, and to the Head of the

Italian Mission, Ambassador Maurizio Enrico Serra. The Human Rights Centre of the University of Padua accompanied this virtuous mobilisation of local administrations with a special edition of its review “Pace diritti umani/Peace human rights” entirely devoted to “*The right to peace*” (Marsilio Editori, 2013, 240 pages), published with the collaboration of the Permanent Mission of Costa Rica to the United Nations (Geneva), specifically from the aforementioned Ambassador Guillermet and his legal advisor, David Fernández Puyana. Their Mission also distributed the magazine to the representatives of Human Rights Council member States and in other areas of the United Nations.

The debate over the recognition of peace as a fundamental right of the person and of peoples is strong proof of the need to bring back into peace-building the lofty aspirations expressed in the Preamble of the United Nations Charter (“We, the peoples of the United Nations, determined to save succeeding generations from the scourge of war...”) and the Preamble of the Universal Declaration (“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”).

Paradoxically, despite the contents of article 28 of the Universal Declaration and those of the statutes of the international organisations, starting with the United Nations Charter and the UNESCO Constitution, peace continues to be a fundamental human right for the *vox populi* but not yet so, formally, under current international *ius positum*. The ongoing efforts within the Human Rights Council are directed at rendering visible that which is already immanent in new international law.

The advocacy of Italian towns in favour of the recognition of peace as a right of the person and of peoples is an expression of a “city diplomacy” exercised based on the principle of subsidiarity and with reference to the provisions of the aforementioned article 1 of the 1999 United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. In their petitionary motion, the Municipal Councils wish to particularly emphasise that peace, as such, is grounded in the right to life and is hence, like the right to life, a precondition for the enjoyment of all human rights, and that the formal inclusion of peace as a right of the person and of peoples in the universal code of human rights requires States to meet specific obligations, starting from disarmament and the commitment to fully implementing the provisions of the United Nations Charter for the effective deployment of a collective security system. Specifically, it is a question of consigning to the past, once and for all, the right to make war – *ius ad bellum* – as an essential attribute of the constituent shape of national statehood, and to

replace it with the duty to peace – *officium pacis* –. This would cut to the roots the right of States over the life and death (*ius necis ac vitae*) of their own and other citizens and would give a firmly operative meaning to the concept of security contained in the United Nations Charter.

In this context, the establishing of Civilian Peace Corps pursuant to the provisions of the so-called “2014 Stability Law” (l. 27 December 2013, No. 147, art. 253), with a budget of 9 million euros to be spent over a three-year period, becomes truly meaningful.

I. Regulatory and Infrastructural Human Rights Situation

Ratification Process Completed, Underway and Neglected

In 2013, Italy was involved in the ratification process for several important international legal instruments concerning human rights. Specifically, on 3 April 2013, the ratification process for the Optional Protocol to the Convention against Torture (OPCAT) was completed, the respective law for implementation and ratification having been adopted by the Italian Parliament on 9 November 2012). Consequently, Italy must proceed without further delay to set up a relevant nationwide preventive mechanism, in line with the provisions of the Protocol itself. On disarmament, the Arms Trading Treaty was signed (2 April 2013) and in October of the same year, Parliament adopted law 118/2013 authorising its ratification and execution (the ratification instrument was deposited on 2 April 2014).

As concerns the legal instruments adopted by the Council of Europe, Italy ratified the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (“Lanzarote Convention”, 3 January 2013); the Framework Convention on the Value of Cultural Heritage for Society (27 February 2013) and the Convention on Preventing and Combating Violence against Women (“Istanbul Convention”, 10 September 2013). In addition, during the year the ratification instruments were finally deposited concerning the Civil Law Convention and the Criminal Law Convention on Corruption (13 June 2013); the respective ratification and implementation laws were adopted by Parliament in June of the previous year (l. 110/2012 and l. 112/2012). On the other hand, no recent legislative action has been taken concerning the acceptance of the Optional Protocol to the Criminal Law Convention on this subject, which completes the provisions designed to protect the judiciary from corruption (the Protocol was signed on 15 June 2003).

Italy has also signed, on the date on which they opened for signature, the two new additional Protocols to the European Convention on Human Rights adopted in 2013. Protocol XV adds, in the Preamble of the ECHR,

references to the principle of subsidiarity and to the States' margin of appreciation as they hold primary responsibility for the functioning of the ECtHR; Protocol XVI allows the highest national courts to suspend their proceedings and request the Grand Chamber to provide an advisory opinion on the interpretation or the application of the rights and freedoms in the ECHR or the additional Protocols thereto.

On the contrary, there has been no progress in the completion of some essential legal human rights instruments on which Italy had already started the respective ratification processes, in some cases, several years ago. These include, at the global level: the International Convention for the Protection of All Persons from Enforced Disappearances (signed in 2007), the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (signed in 2009) and the Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (signed in 2012); at the European regional level: Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, prohibiting discrimination (signed in 2000) and the Convention on Human Rights and Biomedicine (Oviedo Convention), for which the Italian Parliament adopted and implemented a law in 2001 (l. 145/2001). Since the ratification instrument of this Convention has not yet been deposited, Italy does not figure as a Party to it. Of the core international human rights treaties, the 1990 International Convention on the Protection of the Rights of all Migrant Workers and their Families is the only international legal instrument which has not been the object of any initiative for its ratification.

Implementation of Social Rights Standards

In January 2014, the Council of Europe European Committee of Social Rights adopted its *Conclusions 2013* on Italy, relative to the thematic group of provisions of the European Social Charter (revised) on "Health, Social Security and Social protection". Of the 19 provisions in this thematic group, the Committee adopted 8 conclusions of conformity (in some cases requesting further information be presented), 7 of non-conformity and 4 requests for more in-depth information. Still regarding the degree of Italy's compliancy with the European system of protection of social rights, Italy has not yet presented its first report on the provisions of the revised Charter which it did not accept, that is, only art. 25, which recognises workers' right to protection of their credit in case of insolvency of their employer. According to the Committee of Ministers' communication, this report should have been presented back in 2004, that is, five years after Italy's ratification of the European Social Charter (revised) (on 5 July 1999). Finally, on the subject of social security, the Committee of

Ministers expressed a substantially positive assessment of Italy's implementation of the European Code of Social Security (see Part III, Council of Europe, II).

Requested legislative Actions

Several international bodies have requested Italy to take action to change legislation relative to the offence of defamation and, specifically, the provisions of the Italian criminal code by which prison sentences of up to three years can be imposed on journalists and editors found guilty of the "aggravated" form of such misdemeanour. Despite the sentences of the European Court of Human Rights and the prompts from organisations such as the United Nations, the Council of Europe and the OSCE, unanimous in judging a prison sentence disproportionate punishment for defamation through printed media (libel), Italy still has not completed the process of amending the legislation concerning the aforementioned issues. An additional concern is that the bill on the matter currently being examined in Parliament (Act C 925), despite being a step in the right direction as it would replace prison sentences with fines, does not appear to be going for complete decriminalisation of the offence of defamation, which was what the European and international organisations had suggested.

Finally, the failure to introduce the crime of torture into the Italian criminal code continues to be criticised by a number of international monitoring bodies. Specifically, in 2013 the Council of Europe Committee for the Prevention of Torture once again highlighted how the absence of the specific offence of torture in the Italian criminal code has made it difficult to prosecute behaviour constituting this serious violation of human rights. In this case, too, not one of the bills aiming to remedy this shortcoming (of which twelve were presented in 2013 alone) has to date been finalised.

Regional Legislation

As in previous years, in 2013 too, the Italian Regions and Autonomous Provinces adopted a number of laws on issues relevant to human rights. It should be pointed out that some of these legislative acts require amendments to previously adopted laws, whereas others are cross-cutting and regard more than one of the thematic categories used in this Yearbook. Bearing this in mind, the total number of laws examined in 2013 was 71, distributed as follows over the various thematic categories: Peace, human rights, development cooperation and fair trade: 3; Equal opportunities, gender issues: 9; Minorities: 1; Migrations: 1; Ombudspersons and Ombudspersons for Children: 2; Persons with disabilities: 5; Workers' rights: 24; Solidarity, social promotion and support to families: 23; Education in citizenship and legality: 3. What stands out in this list is the

large (and growing) number of regional laws for the protection of workers' rights (+ 13 compared to 2012) and the promotion of solidarity and support to families (+ 1), data which confirm the efforts certain local and regional bodies have put into tackling the social impact that the protracted Italian economic and employment crises are having at the territorial level.

Infrastructural Shortcomings: National Human Rights Institutions

Despite the numerous and repeated recommendations received from Europe and international institutions, Italy has still not created an independent national Institution for human rights in line with the Paris principles.

Concerning the establishing of the National Commission for Human Rights, in 2013 two bills were presented: one to the Chamber of Deputies and one to the Senate. Each of them has been assigned to its respective parliamentary commission, however neither branch of Parliament has yet started examining them. Moreover it should be remembered that, now the Optional Protocol to the Convention against Torture has been ratified, the National Commission can also take on the functions of the national mechanism for the prevention of torture which said Protocol envisages, in line with the provisions in art. 3(3) of the law authorising its ratification and implementation (l. 195/2012).

Regarding Ombudspersons, no legislative measures to establish an Ombudsperson at the national level have been taken. On the other hand, the activity of the regional, territorial and provincial Ombudspersons has continued, protecting the rights and interests of individuals in dealings with the public administration, with the support of the National Coordinating Body of Ombudspersons and the Italian Ombudsman Institute. In 2013, an Ombudsman was appointed for the Campania Region (the post was vacant in 2012), bringing the total number of incumbent Regional Ombudspersons to 15, out of a total of 19 Regions and Autonomous Provinces (17 + 2) whose statutes contemplate this institution. The figure of the Ombudsperson also exists in 24 ordinary Provinces. In 16 of these, the Ombudsperson performs the duties of territorial Ombudsperson, with responsibility also for the territories of the Municipalities with whom an agreement has been made.

In December 2013, the Government adopted l.d. 146/2013, which in art. 7 provides for the establishment of a National Ombudsperson for the rights of persons detained or deprived of their personal freedom. The National Ombudsperson is collegial and will have the function of acting as a watchdog to ensure that the execution of custodial sentences and of other forms of restriction of personal freedom is implemented in compliance with the regulations and principles established by the Constitution, by

international human rights conventions and by the laws of the State. It is hoped that immediate action will be taken to appoint the members of this new independent authority and to provide it with the resources necessary for it to be able to fulfil its institutional duties.

II. Implementation of International Obligations and Commitments: Implementation of ECtHR Case-law

2013 practice confirmed the positive trend of Italian judges, from the Constitutional Court and the Supreme Court downwards, to consciously and extensively resort to international sources on human rights issues, including, especially, the European Convention of Human Rights. However, despite the increasing efforts of the judiciary to harmonise the national and the international, on certain specific issues the Italian legal system as a whole continues to prove itself somewhat impermeable, or incapable of adapting to some consolidated orientation from case-law developed by the Court of Strasbourg.

Issues relating to the excessive duration of judicial proceedings, including proceedings to establish redress for the excessive duration of previous proceedings, continue to cause concern in this regard, not least because of their structural nature. Specifically, in redress proceedings, the amendments to the Pinto law, the objective of which was to speed up the procedure for ascertaining the damages payable for the unreasonable duration of proceedings, appears not only to have failed to produce the results expected, but doubts have also been raised as to its compliancy with the Constitution.

Another issue which has brought Italy a series of censures from Europe over the years, culminating in the pilot judgment in the January 2013 *Torreggiani and others* case, is the structural inadequacy of the Italian prison system. It should be noted that, in addition to the problems of overcrowding, in itself a situation which the Strasbourg Court considers potentially damaging to human dignity, the shortcomings of the Italian prison system have also led to a number of judgments against Italy for violation of art. 3 ECHR as applied to the conditions for prisoners with particular pathologies. Finally, the ECtHR continues to receive cases questioning the compatibility with art. 6 ECHR (“fair trial”) of certain legal instruments presented as “interpretative”, but which in effect make retroactive changes to legal positions that citizens believed established by reason of consolidated case-law orientation. The most significant example of these problems in 2013 is the pilot judgment in the *M.C. and others* case during which, among other things, further examples of violation of the principle of pre-eminence of the law emerged,

because the Italian authorities had failed to implement a ruling of the Constitutional Court.

On the other hand, two 2013 rulings by the Italian Constitutional Court deserve mention as examples of a positive convergence, or exemplary use of ECtHR case-law. In the first, concerning the implications of *Scoppola* (2) case-law, the Court recognised the general applicability of the ruling by the Strasbourg Court and declared that the law object of censure in Europe was unconstitutional in all those cases where it had brought about identical prejudice. In the second, the Constitutional Court, in effect making a legal about-turn, accepted the opinion expressed by the ECtHR in the *Godelli* case as to the right of an adopted child to know his family origins versus the request for anonymity expressed at the time of his birth by his biological mother.

III. Adoption and Implementation of Policies

Prison Conditions: Overcrowding and Ill-treatment

As highlighted in the special-focus paragraphs above, concerning the desirable legislative actions and acceptance of ECtHR case-law, the question of prison conditions is a particularly pressing issue in the overall framework of the human rights situation in Italy. One of the main problems connected to this subject is, as is well known, that of overcrowding in prisons. According to data provided by the Prisons Administration Department (DAP), updated to April 2014, there are 59,683 people in prison in Italy (2,524, or 4.2% of the overall number, are women; 20,521, or 34%, are foreigners). The regular total capacity of Italy's 205 prisons is 49,091. Compared to the previous year (DAP data from December 2012), the total number of detainees has decreased by 6,018, while the overall capacity has increased by 2,051. The ratio between number of detainees and places officially available is now 1.2 (approximately 120 detainees for every 100 available places), whereas in 2012 it was about 1.4 (140 detainees for every 100 places).

However, despite the aforementioned decrease in the prison population, the measures aimed at reducing prison overcrowding implemented in recent months by the Italian Government still appear insufficient to provide a systematic and definitive solution to this serious structural issue, as imposed by the European Court of Human Rights with the *Torreggiani* "pilot judgment" (which became final in May 2013). Moreover, as highlighted in the reports published in 2013 by the Council of Europe Committee for the Prevention of Torture (CPT), there are still situations in some Italian prisons where the minimum requisite of 4 m² per detainee (in multiple occupation cells) is not respected. It is therefore incumbent

upon the Italian authorities, over a year since the *Torreggiani* sentence became final, to adopt remedies of a structural nature, to act in parallel at the administrative and normative level, and consider more frequent recourse to alternative, non-custodial sentences and reducing the use of pre-trial detention, as recommended by the international monitoring bodies.

Another particularly pressing issue which emerges from the recommendations of the international monitoring bodies, especially in the CPT reports, is on the question of ill-treatment in prison (see Part III, Council of Europe, IV). The measures recommended in this area are mainly directed towards: strengthening the effectiveness of investigations into those responsible, where there are reports or signs that ill-treatment has occurred while a person was in police custody or in prison; ensuring that all persons deprived of personal freedom have full access to all procedures designed to protect them from any ill-treatment; boosting efforts aimed at preventing any instances of ill-treatment through initiatives such as establishing an independent inspection system.

Progress of the National Strategy for the Inclusion of Roma, Sinti and Traveller Communities

The condition of Roma and Sinti and the process for the social inclusion of members of these communities in Italy is another issue on which the attention and concern of international monitoring bodies and civil society organisations are focused. A paradigm shift compared to the “emergency” approach long taken by the Italian authorities towards these social groups (calling it the “Nomad Emergency”) began in February 2012, with the Government’s adoption of the National Strategy for the Inclusion of Roma, Sinti and Traveller Communities. The Strategy develops an inter-ministerial participatory approach, aiming to open up a new stage in relations with the members of these communities. One of the pillars of this new approach is its emphasis on territorial cooperation, to be effected through the planning of activities involving local institutions and non-institutional actors (including representatives of the Roma, Sinti and traveller communities), with special attention focused on protection of the human rights of the people involved in the social inclusion process.

Since late 2012, a number of roundtables have been established, involving civil society organisations and representatives of local and regional bodies, in order to implement the principles and the provisions relative to the four areas identified in the Strategy for priority action: education, work, housing and healthcare. Of the roundtables, two are particularly important: the Legal one (first meeting in January 2013), which is charged, *inter alia*, with the complex task of finding solutions for the

situation of over 15,000 *de facto* stateless Roma born in Italy to stateless parents from the former Yugoslavia (see 2012 *Yearbook*, p. 35) and the Housing Policy roundtable. The latter, which convened for the first time on 18 November 2013, is tasked with contributing to the abandonment of the practice of “clearing” Roma camps and with finding suitable housing solutions as an alternative to living in settlements. Indeed, these two issues are those most frequently mentioned in the recommendations made to Italy by regional and international human rights organisations.

Moreover, following stimuli from UNAR and the Italian State-Regions Conference, eight Regions have set up regional working groups to strengthen territorial cooperation and foster the participation of the various local actors concerned in drawing up the details of plans for inclusion. There is also an active statistics task force involving ISTAT, ANCI and the EU Fundamental Rights Agency (FRA), set up to gather specific, non-aggregate data on the presence of Roma in Italy, essential to the adoption of effective measures which are functional in relation to the objectives and the inclusive approach the Strategy has developed.

In September 2013, the inter-ministerial steering committee charged with guiding the integration process over the medium and long term met in order to boost the general advancement of the Strategy and enhance the channels for dialogue and cooperation between the national and sub-national levels. However, at present it is difficult to find any detailed information on the current state of progress of the various activities of the aforementioned roundtables, and hence, on the real state of implementation of this stage of the Strategy. The initiatives undertaken to date show a gradually developing commitment based on securing the participation of all the different types of actors involved in the process of social inclusion of Roma and Sinti, and also close attention to the many problematic issues raised by civil society and the main international organisations monitoring human rights. In order to comply with the medium and long-term commitments made (the reference period for the implementation of the Strategy is 2012–2020), local and national authorities will therefore have to continue and redouble the efforts made thus far, together with civil society organisations and the representatives of the Roma community, including plans to adopt some normative provisions. On this issue, it should be remembered that in the first half of 2013 two bills were presented in the Senate which could support their efforts: Act S 560 (Ratification and execution of the European Charter for Regional or Minority Languages, done in Strasbourg on 5 November 1992) which in art. 3, provides for linguistic and cultural protection afforded by the Charter to be applied to these minorities too (in addition to those already protected under l. 482/1999) and Act 770 (Provisions for the Protection

and Equal Opportunities for Roma and Sinti minorities). To date, however, examination of these bills by their respective parliamentary committees has not yet started.

The Rights of Migrants, Refugees and Asylum-Seekers

In Italy the migratory phenomenon has for quite some time now become a structural phenomenon. According to estimates in the *2013 File on Immigration Statistics* (Dossier Statistico Immigrazione 2013), published by the “Centro studi e ricerche IDOS/Immigrazione”, together with the UNAR, the number of foreign citizens regularly present in Italy in 2012 was 5,186,000, of whom about 4,388,000 with residency status, equivalent to 7.4% of Italy’s total population.

2013 was marked by a large number of migrant landings in the Mediterranean, some of which ending in tragic shipwrecks, such as that on 3 October 2013 off the island of Lampedusa, which caused the death of hundreds of refugees and migrants, prevalently from Eritrea. Partly due to these arrivals, the number of asylum requests registered in Italy in 2013 were 27,800 (+60% compared to 2012, but well below the spike at 34,100 requests in 2011, the year of the so-called “Arab Spring” in north African Countries). These figures place Italy seventh out of the 44 industrialised Countries by number of asylum requests received (about 5% of the total number of requests).

In this area, the most critical aspects concern not only access to and living conditions on Italian soil (violations of the principle of *non-refoulement*, difficulties in accessing the procedures to request asylum, protracted detention in the Centres for Identification and Expulsion, problems in the identification and reception of unaccompanied minors), but also the many cases of discrimination targeting migrants who are regular residents of Italy. In 2012, UNAR recorded 659 cases of racial discrimination, an increase of 22% compared to 2010. The mass-media (particularly the Internet) are the arena in which the greatest number of cases of discrimination occurred. In the workplace, the condition of migrants is often marked by occupying jobs for which they are over-qualified and widespread instances where work is temporary, underground, exploited and on the verge of slavery, as well as subject to a high level of workplace accidents (15.9% of all work accidents, according to the *2013 File on Immigration Statistics*, without taking into account the so-called “invisible accidents”, because they were not reported: 164,000 according to INAIL – the Italian national work accident insurance institute). In the area of education, the drop-out rate of foreign children and adolescents is higher than that of Italians, both at middle school (0.49% for foreigners compared to 0.17% for Italians) and at high school (2.42%

compared to 1.16%). Migrants are particularly subject to discrimination also as concerns their right to housing (the *Immigration Statistics File* estimates that about 20% of migrants live in unsuitable and precarious housing) and their right to healthcare (only 6 of the Regions and Autonomous Provinces have formally ratified the agreement approved by the permanent State-Regions Conference on the elimination of unequal access of immigrants to health services). Cases of racism are on the rise in the world of sport, too: there were 699 instances of racism involving fans during the 2012–2013 football championship season (including Serie A and lower divisions, the Coppa Italia, the under-20 league championship and friendly matches), involving 29 clubs and ensuing in fines for almost 500,000 euros.

The Yearbook makes reference to the frequent recommendations made to Italy by international bodies and experts, specifically the UNHCR and the United Nations Special Rapporteur on the human rights of migrants, that Italy eliminate discrimination and promote the full enjoyment of rights and equal opportunities for migrants (see Part III, United Nations, II, C and IV). In any event, all agree on one essential element: Italy needs to get away from a purely emergency and security-oriented view and manage the migratory phenomenon as a structural one, the systematic planning for which must be regulated through ordinary instruments and multi-level governance involving the Ministries concerned, the Regions, local administrations and civil society.

IV. Structure of the 2014 Yearbook

The objective of the *Italian Yearbook of Human Rights 2014* is to provide a snapshot of the human rights situation in Italy both from the legislative and the “infrastructural” point of view, and from that of the practical implementation of policies and initiatives to promote and protect them. The reference timeframe of the book is calendar year 2013. The level of detail and further background supplied in the various sections allow for cross-cutting and targeted reading, which can also be developed by consulting the analytical indexes.

The information presented in the first three Parts of the Yearbook come from documents in the public domain, normally consultable via the official web pages of each body examined. For Part IV the databases of the courts mentioned were used (for Italian case-law, the Giuffrè “De Iure” database was that used the most). From this edition of the Yearbook, the complete and updated lists of the international legal instruments adopted and Italy’s behaviour in relation to them (ratifications, signatures, no action) have been made available online in the specific section hosted on the “Pace Diritti Umani” website (www.italianhumanrightsyarbook.eu, Attachments”)

managed by the University of Padua Human Rights Centre pursuant to art. 2 of Veneto regional law 55/1999.

Part I of the Yearbook illustrates the main developments in Italy's incorporation of international and regional laws into its own domestic legal order. This overview starts from the universal level (United Nations), moves on to the regional level, comprising legislation drawn up by the Council of Europe and the European Union, before presenting domestic legislation which has implemented international obligations through national and regional laws.

Part II illustrates the human rights infrastructure in Italy and is divided into three chapters. The first presents the structure, functions and activities of State bodies: Parliament, Government, the Judiciary and independent authorities; it also covers the activities of civil society organisations and academic institutions which operate at the national level. The second chapter refers to the sub-national level of the Italian order and illustrates the variegated local and regional human rights infrastructure and the relative co-ordinating bodies at the national level. The third chapter is devoted to the peace and human rights infrastructure and the local and international initiatives in this area developed by the Region of Veneto. The specific focus on this Region is explained by the pioneering commitment shown by Veneto, dating back to its regional law 18/1988, in promoting a culture of human rights, peace and international solidarity.

Part III examines Italy's position with reference to the regional and international bodies and mechanisms for monitoring the implementation of human rights. Ample space is given to the evaluations and recommendations that these bodies have made on Italy following specific visits to the Country and periodic monitoring activities. Italy's role within these organisations and the contribution of its representatives for the promotion of human rights at regional and global level are highlighted. This Part is divided into five chapters. The first focuses on the United Nations system, concentrating mainly on the activities of the General Assembly, the Human Rights Council and the specialised Agencies. The second chapter turns to the Council of Europe, whereas the third is on the European Union. These two chapters complement the information presented in part I (concerning legislation) and Part IV (concerning case-law), relative to EU and Council of Europe activities in 2013. The fourth chapter is on the Organisation for Security and Cooperation in Europe (OSCE) and its bodies for the promotion of the human dimension of security. The fifth and final chapter is on international humanitarian and criminal law and in this area, it provides updates on the level of implementation of their provisions in Italy and also a list of the international peace missions which saw the participation of Italian troops in 2013.

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

In consideration of the great significance of the Italian Municipalities' initiative regarding the international recognition of peace as a fundamental right of the person and of peoples, this Yearbook includes an exceptional addition: an essay by Ambassador Christian Guillermet Fernandez, Deputy Permanent Representative of Costa Rica to the United Nations in Geneva and Chairperson/Rapporteur of the Intergovernmental Working Group on the right to peace established by the Human Rights Council in 2012, and by Dr. David Puyana Fernandez, Legal Advisor to the Chairperson of the Working Group. The Draft Declaration attached to the essay, published on 24 June 2014, is the subject of serious criticism, in particular by the several NGOs that are calling for the recovery of the substantial part of the Draft that was previously adopted by the Advisory Committee of the Human Rights Council. Article 1 of the previous Draft reads:

1. Individuals and peoples have a right to peace. This right shall be implemented without any distinction or discrimination for reasons of race, descent, national, ethnic or social origin, colour, gender, sexual orientation, age, language, religion or belief, political or other opinion, economic situation or heritage, diverse physical or mental functionality, civil status, birth or any other condition.
2. States, severally and jointly, or as part of multilateral organizations, are the principal duty-holders of the right to peace.
3. The right to peace is universal, indivisible, interdependent and inter-related.
4. States shall abide by the legal obligation to renounce the use or threat of use of force in international relations.
5. All States, in accordance with the principles of the Charter of the United Nations, shall use peaceful means to settle any dispute to which they are parties.
6. All States shall promote the establishment, maintenance and strengthening of international peace in an international system based on respect for the principles enshrined in the Charter and the promotion of all human rights and fundamental freedoms, including the right to development and the right of peoples to self-determination.

UPR: Towards the Second Cycle of the Universal Periodic Review

How is Italy preparing for its second Universal Periodic Review before the United Nations Human Rights Council (October 2014)? To what degree have the recommendations received during the first Universal Periodic Review (2010) been implemented? These questions persuaded the members of the Yearbook's research and editorial committee to prepare an analysis, presented in the coming pages and based on the contents of the *2014 Yearbook* and the three previous editions (2011, 2012 e 2013), of the status of implementation of the recommendations made to Italy in 2010. This analysis is further backed by the information contained in the reports adopted, over the same period, by international bodies (the United Nations, the Council of Europe, the European Union and the OSCE) and civil society organisations (particularly Upr.info, Amnesty International, Human Rights Watch and the Comitato per la promozione e protezione dei diritti umani – Italian Committee for the Promotion and Protection of Human Rights).

In the course of the first Universal Periodic Review, Italy received 92 recommendations, relative to 19 thematic areas, from 51 different Countries (doc. A/HRC/14/4). The overwhelming majority of these recommendations (83%) belong to 8 thematic areas:

1. *the rights of migrants, refugees and asylum-seekers* (recommendations Nos. 9–10 and 67–82): within this area, the most recurrent recommendations request Italy to rethink its policy of criminalising irregular migrants and the push-back policies implemented in the Mediterranean;

2. *racial discrimination* (recommendations Nos. 18–33): particular concern is expressed over the increase in the number of cases of discrimination reported by the UNAR, with particular reference to the increased number of public speeches inciting racial hatred;

3. *the rights of national minorities* (recommendations Nos. 56–66), with particular reference to the need to improve the conditions of the Roma, Sinti and travellers communities;

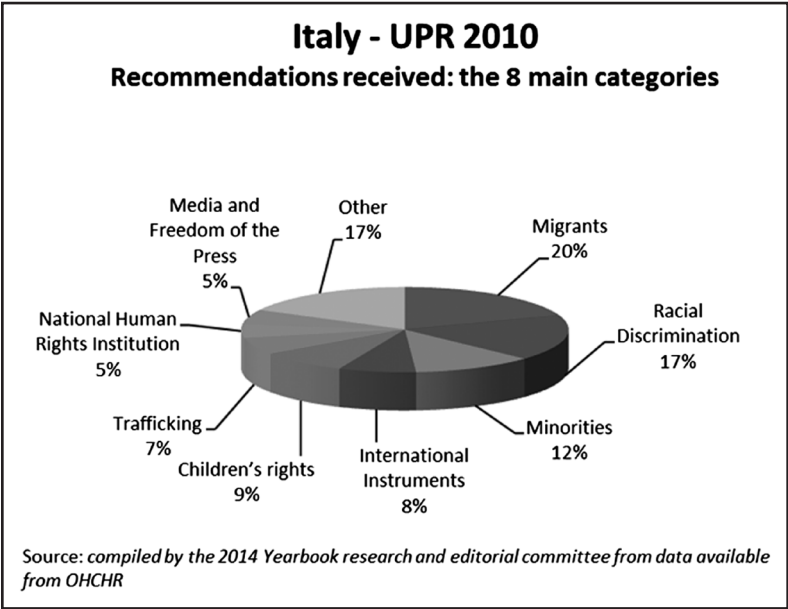
4. *ratification of international instruments* (recommendations Nos. 1–7): Italy is specifically requested to ratify the United Nations Convention on the Rights of Migrant Workers, the International Convention for the Protection of All Persons from Enforced Disappearances and the Optional Protocol to the Convention against Torture;

5. *the rights of children* (recommendations Nos. 37–44): the recommendations are above all on the need to combat the phenomenon of violence against and ill-treatment of children, and the need to establish mechanisms to enshrine their right to be heard in court and/or administrative proceedings which concern them directly;

6. *trafficking in human beings* (recommendations Nos. 83–88): Italy has been invited to redouble previous efforts to stamp out human trafficking, offer adequate protection to victims, particularly women and children, and to prosecute traffickers;

7. *lack of human rights structures at the national level* (recommendations Nos. 11–15): Italy should correct this structural shortcoming in the shortest possible time by creating an independent national human rights institution in line with the Paris Principles;

8. *Independence of the media and freedom of the press* (recommendations Nos. 50–54): the Human Rights Council invites Italy to implement suitable measures to enhance the independence of the information system and protect freedom of the press, with particular reference to the protection of journalists from attack by organised criminal groups.



Other equally serious, albeit less frequent, recommendations highlight shortcomings and critical issues in the national system for protecting human rights, such as, for example, the fact that the crime of torture is not

envisaged in the Italian legal order, overcrowding in prisons, the spreading of the scourge of violence against women.

Of the 92 recommendations received, Italy accepted 80, therefore committing to their implementation within four years, and rejected 12 of them. Included in the latter group are the recommendations on the need to: introduce torture as a specific crime in the Italian criminal code; abrogate the laws which criminalise irregular immigration; ratify the United Nations Convention on the Rights of Migrant Workers (for a more detailed illustration of these recommendations, see *2011 Yearbook*, pp. 169–173). Italy's commitment to implementing the recommendations it accepted was moreover reconfirmed in 2011, when the Italian Government presented its candidature for election to the United Nations Human Rights Council: thanks in part to this commitment, Italy was indeed elected for the three-year period June 2011–June 2014.

On the basis of data collected in the 2011–2014 Yearbooks, it is apparent that as of May 2014, Italy had only fully implemented 14% of the recommendations accepted¹. Specifically, Italy has: ratified the Optional Protocol to the Convention against Torture, committing to introducing the required domestic preventive measure and ratified the Council of Europe Convention on Combating Trafficking in Human Beings; drawn up the Third two-year National Action Plan for the Protection of the Rights and Development of Children and Adolescents 2010–2011, the National Strategy for the Inclusion of Roma, Sinti and travellers 2012–2020 and the National Plan against Racism, Xenophobia and Intolerance for the three-year period 2013–2015; strengthened the measures adopted to combat trafficking in human beings and to especially protect women and child victims of trafficking. Recommendation No. 73 is also one of those fully implemented (striking out the aggravating factor connected to the status of irregular immigrants: criminal code art. 61, No. 11-bis) although initially rejected by Italy during the Periodic Review: the Constitutional Court declared this circumstance unconstitutional in judgment No. 249 of 8 July 2010, (see *2011 Yearbook*, pp. 277–278).

28% of the recommendations have been partially implemented, or certain positive actions have been undertaken towards implementing them, but these are still not sufficient to ensure fully achieving the objective established². In effect, some of the recommendations include long-term objectives which require the activation of a complex legislative process

¹ Recommendation Nos. 3, 4, 7, 18, 19, 42, 43, 73, 74, 82–84, 87.

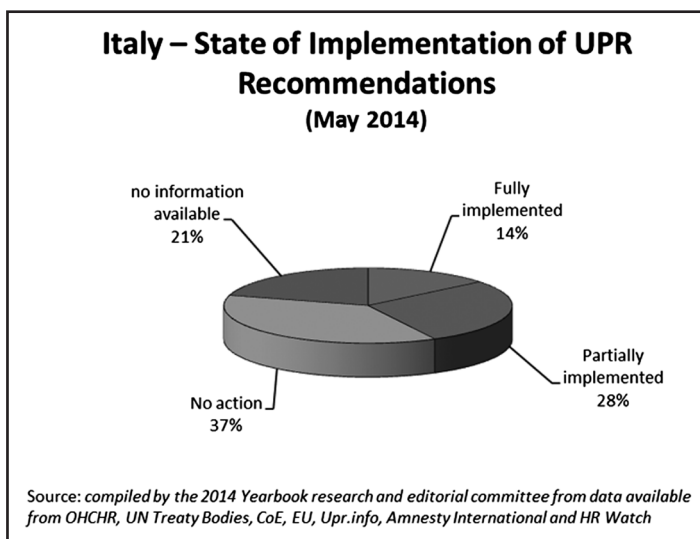
² Recommendation Nos. 6, 11, 15, 20–22, 26, 28–30, 32, 34–36, 40, 45, 46, 57, 62, 67, 72, 75, 80, 85, 86, 88, 89, 92.

or several cycles of public policies, which makes it very difficult to complete them all in a timeframe of only 4 years. Some examples are:

– *recommendations Nos. 21, 22, 26, 28–30, 32*: despite efforts deployed at the national level to combat all forms of racism and racial discrimination, through campaigns and education and awareness-raising initiatives promoted above all by the Department for Equal Opportunities, the Ministry of Labour and Social Policies and the Ministry for Integration, between 2010 and 2012 UNAR recorded an increase of 22% in the number of instances of racial discrimination (see, in this Yearbook, Part II, National Bodies with Jurisdiction over Human Rights, II, A);

– *recommendations Nos. 45–46*: As already mentioned in the focus section above on prison conditions, the Prison Administration Department estimates that between December 2012 and April 2014, the ratio between detainees and number of places available in prison has moved from 1.4 (140 detainees per 100 places) to 1.2 (approximately 120 detainees per 100 places). However, these improvements still appear insufficient to systematically and permanently resolve the serious problem of prison overcrowding.

– *recommendation No. 72*: on 17 May 2014, law 67/2014 came into effect, under which the Government is to abrogate the criminal offence of a first irregular entry and stay in Italy, making it an administrative offence. This will be effected through a legislative decree, to be presented by the Minister of Justice with the agreement of the Minister of Economy and Finance, and which must be adopted within eighteen months from the date the law came into effect. This recommendation, too, had been initially rejected by Italy.



Overall, then, Italy has made progress in the implementation of 42% of the 92 recommendations received, including two which it initially rejected (striking out the “aggravating circumstance” of being an irregular immigrant and decriminalising the offence of irregular entry and stay in Italy).

On the other hand, no action has been taken concerning 37% of the recommendations received³. Specifically, Italy has not withdrawn the reservations it expressed on the International Covenant on Civil and Political Rights (recommendation No. 1); it has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families nor that against enforced disappearances (recommendations Nos. 2 and 5); it has not yet introduced the crime of torture into the national legal order, nor has it established the independent National Commission for Human Rights (recommendations Nos. 8 and 11–15), despite several bills having been presented on the issues (see, in this Yearbook, Part II, National Bodies with Jurisdiction over Human Rights, I, D); it has not adopted legislative measures to strengthen the mandate and operational capacities of the UNAR (recommendation No. 16); it has not made human rights training compulsory for police and justice sector workers (recommendation No. 31); it has not amended national legislation in order to recognise the Roma and Sinti communities as national minorities (recommendations Nos. 56 and 58); it has not made a significant increase to its official development assistance (stuck at only 0.16% of GDP in 2013) in order to reach the objective of 0.7% GDP established by the United Nations (recommendations Nos. 90 and 91).

Finally, it is impossible to assess the situation of about 20% of the recommendations because the terms in which they are formulated are so generic as to make it impossible to establish clearly whether or not the objectives set have been achieved⁴.

The Italian Government has only a few months left to further improve the level of implementation of the recommendations received in 2010 and to realise at least the most inescapable of the commitments made on international human rights standards before the now imminent second Universal Periodic Review. The research and editorial committee of the Yearbook hereby expresses once again its hope that the preparatory stage for the Review before the United Nations Human Rights Council be seized as an opportunity to promote the diffusion of a human rights culture in Italy, bringing together the efforts and the commitment of public institutions, private bodies and civil society organisations.

³ Recommendation Nos. 1, 2, 5, 8, 12–14, 16, 17, 24, 25, 27, 31, 38, 41, 44, 50–54, 56, 58, 60, 69–71, 77, 79, 81, 90, 91.

⁴ Recommendation Nos. 9, 10, 23, 33, 37, 39, 47–49, 55, 59, 61, 63–66, 68, 76, 78.

Italian Agenda of Human Rights 2014

For the third year running, the research and editorial committee of the *Italian Yearbook of Human Rights*, based at the Human Rights Centre of the University of Padua, has compiled an “Italian Agenda of Human Rights”, drawing on analysis of the recommendations made to Italy at the international level and the most critical issues identified in the successive editions of the Yearbook itself. The Agenda can be used as a practical guide to choosing the main actions to be undertaken on the legislative, infrastructural and policy-making fronts in order to strengthen the Italian system of promoting and protecting human rights (the 2012 and 2013 Agendas are available online at www.italianhumanrightsyarbook.eu).

Only 5 of the items (and sub-items) on the 2013 Agenda were actually met during the year. Italy did deposit the instruments of ratification of the Civil Law Convention and Criminal Law Convention on Corruption and also ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Moreover, Italy presented the outline of its National action plan against racism, xenophobia and intolerance 2013–2015, in line with the spontaneous commitment made in 2011, when Italy submitted its candidature for election to the Human Rights Council; the National Action Plan for the promotion of the rights of persons with disabilities was also adopted. Finally, the Government has requested the publication of the two reports drawn up by the Council of Europe Committee for the Prevention of Torture following its visits to Italy in 2010 and 2012 to assess the conditions of people deprived of their personal liberty. Consequently, these five points are not mentioned in the 2014 Agenda.

On the remaining points, on the other hand, some distinctions should be made. In certain areas, significant progress has been made, but a longer time-frame is considered necessary to assess whether Italy has actually met its commitments. Consequently, these points are reformulated, based on the developments observed and appear again in the 2014 Agenda, to allow for a longitudinal assessment of their implementation. Other issues have not been the object of any specific initiatives by the Italian authorities and so the research and editorial committee considers special attention should be directed to them. These points are therefore confirmed again, in the same words as last year, in the 2014 Agenda. Finally, some new points have been added to the Agenda in consideration of the most recent

developments at the national and international level concerning the promotion and protection of human rights, including the human right to peace.

Generally speaking, the points listed in the *Italian Agenda of Human Rights 2014* coincide with most of the recommendations which were rejected, implemented only in part or not at all out of those made to Italy during the 2010 Universal Periodic Review (see the previous section). And so the 2014 Agenda is also offered as a practical contribution to the preparatory process for Italy's second cycle of UPR, scheduled for October 2014.

Italian Agenda of Human Rights 2014

<i>Normative Level</i>	<p>1) Ratify the following legal instruments at the United Nations and the Council of Europe:</p> <ul style="list-style-type: none"> a. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families b. International Convention for the Protection of All Persons from Enforced Disappearances c. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights d. Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure; e. United Nations Convention on the Reduction of Statelessness; f. Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms; g. Protocol 15 to the Convention for the Protection of Human Rights and Fundamental Freedoms; h. Protocol 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms; i. European Convention on Nationality; j. Additional Protocol to the Criminal Law Convention on Corruption. <p>2) Deposit the instruments of ratification for the following legal instruments for which Parliament has already adopted the relative ratification and implementation laws:</p> <ul style="list-style-type: none"> 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. <p>3) Support the adoption of the draft Declaration on the right to peace (A/HRC/20/31), presented to the Human Rights Council by its own Advisory Committee in February 2012.</p>
	<p>4) Accept article 25 of the European Social Charter (revised), which recognises the right of workers to the protection of their claims in the event of insolvency of their employer.</p>