BEUCITIZEN
BARRIERS TOWARDS EU CITIZENSHIP

WP7: CIVIL RIGHTS

QUESTIONNAIRE'S ANSWERS

Deliverable D7.1 "Report with a critical overwview of the civil rights of EU citizens and third-country national"

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Version 2.0: 15 July 2014

Grant Agreement Number 320294
SSH.2012.1-1

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QUESTION 1: IDENTIFICATION OF CIVIL RIGHTS

Question 1: Identification of civil rights

- ✓ Which rights are considered in your country as civil, civic and citizenship rights?*
- ✓ Amongst those rights, which are considered 'core'?

The idea is to get an overview of what are considered (core) civil rights in EU Member States.

Please specify whether there are disagreements/developments in the notion of civil, civic or citizens' rights and liberties, and their core elements.

The basis of the system of fundamental rights of the Italian legal system is art. 2 of the Constitution: "*The Republic recognizes and guarantees inviolable rights of man, for the individual, and for social groups where personality is expressed, and demands the fulfilment of the fundamental duties of political, economic, and social solidarity*"[1].

The rights established by art. 2 Const. are, usually, defined as absolute, inalienable, indispensable and imprescriptible. They do not coincide, however, with the "classic" number of political and civil rights and freedoms, since they refer to individuals, so even non-citizens (see Const. Court, no. 245/2011), nor can they be limited to the single subjective situations that the Constitution expressly mentions as inviolable. In this regard, the term "inviolable" means the legal impossibility for anyone (and therefore for public authorities too) to determine the elimination or even substantial compression of the rights designated as such[2].

A profile of this article that is often debated in legal literature is its scope; particularly the knot of the question is whether art. 2 is to be considered an "open" or a "closed" clause. In this regard, scholars are divided among those who believe that art. 2 refers to the rights

[1] The concepts of civil, civic and citizens' rights overlap and/or are used interchangeably in many legal systems. In this questionnaire, we will use the term civil rights as potentially including all three notions and covering all fundamental rights which are not political, social and economic. Please indicate how these three notions fare in your legal systems, and which one is more commonly used to refer to the rights under consideration (if any). Please use original language as well as the most accurate English translation of the term.

This translation of the Italian Constitution, and the others that will be quoted in this document, are taken from 'The Constitution of the Italian Republic', edited and annotated by C. Casonato and J. Woelk, Faculty of Law – University of Trento, 2013.

[2] However, always taking into account the principle of balance of interests, which, in the constitutional system implies that every right - even if critical - can always be compressed when it is reasonably necessary to protect other meritorious legal positions.

already present in the Constitution and those who, instead, identify in it the possible foundation of any rights that emerge over time in relation to the changing social and political context, finding constitutional protection, although not explicitly recognized. The discussion can also be resized since the Constitutional Court has played the role of a "lung" breathing changes of social consciousness and, over time, allowed the reception of a list of "new" rights, through a broad interpretation of the constitutional requirements.

Article 2 shall be used and interpreted in close connection with art. 3 Const.: "*All citizens have equal social dignity and are equal before the law, without distinction as to sex, race, language, religion, political opinions, or personal or social condition. It is the duty of the Republic to remove those obstacles of an economic and social nature that, by in fact limiting the freedom and equality of citizens, impede the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country*".

Art. 3 provides a distinction between "formal equality" and "substantive equality". Equality is formal when a simple prohibition of discrimination is prescribed: this is the bourgeois-liberal notion of equality, that was conceptualized in the rule of law view of the XIX century, developing an approach in which all citizens shall be treated formally in the same way. With the evolution of the constitutional system, and the new system of welfare state, the concept of equality shifts to a substantial approach: paragraph 2 of art. 3 obliges the legislature and the government to grant equal treatment (to be inteded as an equal starting points for disadvantaged citizens) by introducing the so called "positive actions", in order to correct disadvantaged situations. Moreover, solidarity is worth for attention. Although there is no hierarchy of rights in the Italian Constitution, in case a balance among constitutional rights i required, the dimension of solidarity often prevails (and the criterion is reasonableness - art. 3 – according to the Constitutional Court case law). The balance, however, is carried on case by case and a civil right is not "core" with respect to another kind of rights. However, there are principles and rights which have been qualified as founding and pivotal for the republican legal order by the Constitutional Court (1146/1988). As consequence, these kind of rights cannot be changed even by constitutional amendment (see art. 138). From this point of view, to a certain extent, thank's to the case law of the Constitutional Court, almost all civil rights are part of this catalog, and then they are "core" with respect to other rights (eg. economic ones). It is anyway hard to determine which civil rights are more or less important; the only criterion for establishing an "internal hierarchy" is the existence of legal reserves in the Constitution, which usually qualify and guarantee better protected rights.

Part I (Rights and duties of citizens) of the Italian Constitution provides several titles that actually list, by categories, and establish the main rights enjoyed by citizens: Title I – Civil Rights; Title II – Ethical and Social Relations; TITLE III – Economic Relations; Title IV – Political Rights.

In order to follow an ordered and easily understandable approach, we will adopt this presentation mode and list the following "civil rights" as identified by our fundamental law[3].

- Personal liberty. Art. 13: "*Personal liberty is inviolable.*

No form of detention, inspection or personal search is admitted, nor any other restrictions on personal freedom except by warrant which states the reasons from a judicial authority and only in cases and manner provided for by law.

In exceptional cases of necessity and urgency, strictly defined by law, the police authorities may adopt temporary measures which must be communicated within forty-eight hours to the judicial authorities and if they are not ratified by them in the next forty-eight hours, are thereby revoked and become null and void.

All acts of physical or moral violence against individuals subjected in any way to limitations of freedom are punished.

The law establishes the maximum period of preventative detention".

  In judicial practice and in scholarly interpretation, the scope of the concept of personal freedom has undergone a significant expansion in the direction of extending the protection against arrests and other forms of physical limitation of the individual. The Constitutional Court has, *inter alia*, extended its application to other areas, together with the interpretation given to Articles 2 and 32 Const., in order to establish the right to self-determination and informed consent in the medical and health care field (Const. Court 438/2008)

- Freedom of residence. Art. 14: "*The home is inviolable.*

  Inspections or searches or seizures may not be carried out except in cases and manner prescribed by law in accordance with the guarantees prescribed for safeguarding personal freedom.

  Controls and inspections for reasons of public health and safety or for economic and fiscal purposes are regulated by special laws."

[3] The term commonly used is precisely that of "civil rights". There may be some differences in doctrine. The category of "civic rights" seems to be obsolete, and in any case refers only to possible rights related to municipalities. The category of "citizens' rights" is indeed covered by that of civil rights: it is distinguished only when it is necessary to identify the political rights for which citizenship takes on a distinctive value.

The home is the spatial projection of the person. Defining the term "home" (*domicilio* in the Italian version) within the meaning of the Constitution is not a simple task, since in the legal system there are at least two different definitions: one in civil and one in criminal matters, with a prevalence of the latter. The Constitutional Court has, however, shown a willingness to extend the notion of "home": "*any isolated space from the external environment which the private person has legitimately*" (see Const. Court no. 88/1987).

- Freedom and secrecy of correspondence and communication. Art. 15: "*The freedom and secrecy of correspondence and of every other form of communication is inviolable.*

  Restriction thereto may be imposed only by warrant which gives the reasons issued by a judicial authority with the guarantees established by law".
- Freedom of movement and residence. Art. 16: "*All citizens may travel or sojourn freely in any part of the national territory, except for general limitations which the law establishes for reasons of health and safety. No restrictions may be made for political reasons.*

  All citizens are free to leave and reenter the territory of the Republic, provided the legal obligations are fulfilled".

  This article, although formally aimed only at citizens, has been extended by the Constitutional Court to foreigners, as these treatments were seen as legitimate, since they are reasonable and proportional (Const. Court 104/1969).
- Freedom of assembly. Art. 17: "*Citizens have the right to assemble peaceably and unarmed.*

  No previous notice is required for meetings, even when in places open to the public.

  For meetings in public places previous notice must be given to the authorities, who may forbid them only for proven motives of security and public safety".
- Freedom of association. Art. 18: "*Citizens have the right to form associations freely, without authorization, for ends which are not forbidden to individuals by criminal law. Secret associations and those which pursue, even indirectly, political ends by means of organizations of a military character, are forbidden*".
- Freedom of religion and conscience. Art. 19: "*All have the right to profess freely their own religious faith in whatever form, individual or associate, to propagate it and to exercise it in private or public cult, provided that the rites are not contrary to*

morality"; and art. 20: "*The ecclesiastical nature and the purpose of religion or worship of an association or institution may not be a cause for special limitations in law, nor for special fiscal impositions in its setting up, legal capacity and any of its activities*".

- Freedom of expression. Art. 21: "*All have the right to express freely their own thought by word, in writing and by all other means of communication.*
  The press cannot be subjected to authorization or censorship.
  Seizure is permitted only by a detailed warrant from the judicial authority in the case of offences for which the law governing the press expressly authorizes, or in the case of violation of the provisions prescribed by law for the disclosure of the responsible parties.
  In such cases, when there is absolute urgency and when the timely intervention of the judicial authority is not possible, periodical publications may be seized by officers of the criminal police, who must immediately, and never after more than twenty-four hours, report the matter to the judicial authority. If the latter does not ratify the act in the twenty-four hours following, the seizure is understood to be withdrawn and null and void.
  The law may establish, by means of general provisions, that the financial sources of the periodical press be disclosed.
  Printed publications, shows and other displays contrary to morality are forbidden. The law establishes appropriate means for preventing and suppressing all violations.
- Art. 22: "*No one may be deprived, for political reasons, of legal status, citizenship, name*".
- Art. 23: "*No services of a personal or a capital nature may be imposed except on the basis of law".*
- Jurisdictional protection. Art. 24: "*Everyone can take judicial action to protect individual rights and legitimate interests.*
  The right to defence is inviolable at every stage and moment of the proceedings.
  The indigent are assured, through appropriate institutions, the means for action and defence before all levels of jurisdiction.
  The law determines the conditions and the means for the reparation for judicial errors"; and art. 25: "*No one may be moved from the normal judge pre-established by law.*

No one may be punished except on the basis of a law already in force before the offence was committed.

No one may be subjected to security measures except in those cases provided for by law.

- Safeguards in extradition. Art. 26: "*Extradition of a citizen is permitted only in cases expressly provided for in international conventions.*

  In no case may it be permitted for political offences.
- Safeguard in criminal responsibility. Art. 27: "*Criminal responsibility is personal.*

  The defendant is not considered guilty until final judgment is passed.

  Punishment cannot consist in treatment contrary to human dignity and must aim at rehabilitating the condemned.

  The death penalty is not permitted, except in cases provided for in martial law".

The notion of "civil right", however, can be considered an undefined legal concept, which may be specified from time to time, according to the evolution of the socio-cultural context. In this perspective, the Constitution would be an "organism" capable of regulating the relationship between the community and the legal system.

In the absence of a specific recognition rule, the Supreme Court (*Corte di Cassazione*) itself has, for example, affirmed for the first time, the existence of an inviolable right to privacy, even outside the sphere of the so-called "domesticity" (*intimità domestica*) (see Court of Cassation n . 2129/1975): this by referring to art. 2 of the Constitution and deriving from that a more general right to personal self-determination.

Even the Italian Constitutional Court (*Corte Costituzionale*) is no stranger to this practice. Several other important rights have been recognized, such as the right to sexual freedom (Const. Court no. 561/1987), the right to personal identity (Const. Court no. 13/1994) and the fundamental rights pertaining to status or biological identity (Const. Court nos. 50/2006, 226/2006).

Thus, the concept of "civil rights" is deduced from the positive law, at the constitutional level: in the first part of the Constitution are found all the legal claims that can be defined as civil rights.

Actually, the same first part of the Constitution lists a further variety of different kinds of rights, differently classified as social, economic or political. This classification is the result of the scholarly elaboration, the criteria of subdivision varying from author to author.

Anyway, these rights are more or less stable since they are now consolidated in legal tradition; the Constitution, as we have noted above, divides the first part in further sections, depending on the nature of the good or interest that the rights granted are intended to protect.

Then, “economic rights” are those which have as their object relations of appreciable capital base, political rights are those that deal with institutions with which citizens actively participate in the democratic processes: differently, “social rights” are those through which individuals can claim a benefit from the same public authority (in a welfare state).

On the other side, “civil rights” are a diverse set of rights, but united by the fact that they constitute the core of the active original legal claims invoked against public authorities: they relate to goods and core values (not of an economic or political nature, but strictly in relation to the existence of human life: this is the true difference between economic and political rights), and they do not consist in a claim of direct provision by the State but in a state obligation to refrain from invading spheres of freedom of individuals (therein lies the difference with social rights).

Thus, they are that rights of “freedom”, in the strict sense, so-called “negative freedoms”, which represented - in the history of constitutionalism - the so-called rights of the first generation, for their emergence with the very first bills of rights issued by sovereigns to their subjects.

QUESTION 2 : NATIONAL SOURCES OF CIVIL RIGHTS

Question 2: National sources of civil rights

✓ Where are these civil rights laid down at a national level (constitutions or constitutional instruments, special (i.e. organic) or ordinary laws, regulations and decrees, case law, local/municipal laws, other legal documents, policy instruments, other sources)?

The idea here is to present the legal and policy framework which forms the basis of national civil rights protection in your country.

➢ Please describe the main legal sources of civil rights (constitution, legislation, general principles, etc.) as well as relevant policy instruments in your country (national, but also regional or local level, where relevant);

➢ Please, already indicate at this stage what you consider to be the strengths and/or weaknesses of the legal protection of civil rights in your country, in terms of framework and substantial standards (not enforcement);

➢ Please indicate whether significant developments have recently taken place in this respect.

The legal framework of civil rights in the Italian legal system is, basically, represented by the provisions of the Constitutional Charter (as described above).

Thus, we refer, as general points of reference, to articles 2 and 3 and to the Title I - Civil Rights, articles 13-27.

It is not possible to list here, with a claim to being exhaustive, any civil rights that the interpretation given by the courts (the Constitutional Court as the courts of merit) to art. 2 Const. determined (furthermore, for a brief overview see above point.). A number of specific rights have been derived by the liberties explained in Title I.

Therefore, the ordinary legislation, of course, listed and profiled the principles incorporated in the Constitution within different application scenarios.

Finally, for the purposes of this questionnaire, there is not a direct relevance of the regional legislation on these issues. It is important to recall that the Italian Republic does not have a federal structure. From a general point of view, it is worth mentioning that in Italy the involvement of regional statutes in the field of fundamental rights is under discussion, even if the issue has a limited impact on the scientific debate. The issue, however, when relevant, relates to social rights (expressly excluded from this study): healthcare, social welfare, etc.

In Italy regional law does not have any direct influence on the protection of civil rights, as letter m) of art. 17 establishes exclusive competence to the State in the definition of the basic level of benefits relating to civil rights.

Nevertheless it is important to take into account that regional law (and related administrative tasks) helps to fill those basic levels of content, and to specify the protection in a whole series of areas in which the regions, instead, have competence.

Regarding the list of matters of regional competence, please refer to the list in art. 117, par. 3 (competence). Under par. 4 any matters not reserved to the state belong to the regions: this solution, however, gives rise to many cases of interference (albeit at the margins, and for special cases) between regional policies and civil rights.

With regard to administrative practice in the protection of civil rights, it should be stressed that this particular category of rights represents the most traditional and longstanding core of legal positions for the benefit of individuals. As a result, the approach of the administration of the protection instruments has been extremely classic, since in these cases the State is not required to offer particular participatory institutions (such as in the case of political rights) or social performances (as in the case of the welfare rights); on the contrary, the typical instruments for the protection of civil rights are represented by the system of courts (see title IV of Part II of Const - art. 101 ff. - where there is a clear system of protection based on ordinary courts and an exhaustive list of cases with special jurisdiction, the most significant of which is administrative justice), and by the police force set up to protect the order and safety of citizens (dependent on the ordinary ministerial structures). There are also less traditional administrative tools established even in the field of civil rights; compared to the general trend, they represent marginal experiences (e.g. the activities of the Italian Communications Authority (AGCOM), typically avoiding the emergence of monopolies in the communications sector, also guarantees the freedom of thought and expression, art. 21).

The strength of the legal protection of civil rights in Italy is the fact that they are all covered, directly or indirectly, by the Constitution and therefore enjoy the guarantees that we outlined above, albeit briefly, that characterize fundamental rights. They are therefore inalienable, non-waivable, imprescriptible, protected by legal reserves, etc.

The weakness can be found instead in the fact that, although in fact rights covered by the Constitution, not all of them are explicitly included in the text of the Constitution itself. The Italian Fundamental Law can be considered as a first-generation law and, as we have seen, many new rights have been the result of evolving case law and established recently (see

the personal status related to the sexual sphere, the right to privacy, etc.). This, in theory, could be a weakness of the system.

In addition, through judicial interpretation, in Italy we are witnessing a direct application of constitutional principles that leads to a strengthening of the protection and its enlargement to legal positions not formally planned (for example, we start to talk about a right to parenthood – procreation). All protection of informed consent is in fact guaranteed at the case law level, through the interpretation of the constitution. The extension of rights to non-citizens is often at this level, especially in the application of the principle of non-discrimination.

Anyway, there are some problems in this system. Since Italy is a typical civil-law country, the *stare decisis* principle does not exist; in general judges are inclined to follow former decisions, but they are not obliged to. This system generates unpredictability and reduces legal certainty. In addition, there are limitations due to the different functions played: judicial decision cannot, in fact, predict everything (see for example the issue of same- sex marriage, where the Court held that the right exists, but it is up to the legislature to predict whether and how to derogate it, excluding the possibility of extending the institution of marriage by judicial decision (Const. Court 138/2010)).

Finally, no significant developments have recently taken place in this respect, apart from constant adaptation and update, at the case law level, of the Constitution in accordance with the shifting economic and social contexts.

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Regarding the list of national provisions and cases related to civil rights see the annexes at the end of this document.

QUESTION 3: INTERNATIONAL AND EUROPEAN SOURCES OF CIVIL RIGHTS

Question 3: International and European sources of civil rights

✓ To which international instruments for the protection of civil rights is your country a party?

✓ How are relevant international and European civil rights norms being incorporated in your country?

✓ To what extent has the European Convention on Human Rights been incorporated, and is relied upon by relevant national authorities (legislators, governments, administrations, courts, etc.)?

✓ How and to what extent are international instruments for the protection of civil rights (i.e. ICCPR) given effect in your country?

The issue of fundamental rights and their definition is inevitably intertwined with the so-called "multi-level system of protection". There are, of course, international conventions or agreements that seek to oblige signatory countries to protect a specific catalogue of rights, most often defined as human or fundamental. The Constitution itself, in some cases, expressly refers to international law: this happens, for example, with reference to the definition of the "legal status of foreigners", which, pursuant to art. 10 , par. 2, "is regulated by law in conformity with international norms and treaties".

The prototype of the supranational texts is the *Universal Declaration of Human Rights*, adopted and proclaimed by the General Assembly on 10 December 1948; however, as everybody know, this text is not binding.

For our purposes, references must be made especially to: the *European Convention on Human Rights* (ECHR) (formally the *Convention for the Protection of Human Rights and Fundamental Freedoms*), which was drawn up in the context of the Council of Europe, signed in Rome on 4 November 1950 and entered into force on 3 September 1953 and, finally, ratified by Italy by Law 4 August 1955, no. 848; and to the International Covenant on Civil and Political Rights (ICCPR), adopted within the UN, which was signed in New York on 16 December 1966 and entered into force on 23 March 1976, finally ratified by Italy with Law 25 October 1977, no. 881. These provisions are legally binding, since they are formally part of the Italian legal system.

A problematic aspect is the relationship of these charters with other sources of the law, especially with the constitutional provisions and particularly with the guarantee provided in art. 2 of the Italian Constitution. It is quite evident that certain formulas – having evident protective nature - of the subjective legal situations tend to perform a synergic function. In fact they "*are integrated, complementing each other in the interpretation*" (see Const. Court, no. 388/1999).

In other cases, however, doubts may arise about a possible friction between the internal guarantees and other guarantees required by other parameters. A paradigmatic case is represented by the ECHR. First of all, this international convention establishes a plurality of rights and freedoms that "converge" with those already provided by the Italian Constitution, often strengthening them and directing their physiognomy according to precise coordinates, even outside the ranks of so-called inviolable rights (see the provisions relating to the protection of the right of defence or to religious freedom). Secondly, the effective enforcement of the constraints imposed on the Member is guaranteed by a court, the European Court of Human Rights, based in Strasbourg, to which any citizen (and non-citizens too) of the Member States of the Council of Europe can apply directly, once they have unsuccessfully exhausted all remedies available under their national law.

Finally, the Convention and its interpretations, made by the European Court of Human Rights, tend to assume, in terms of the system of sources of law, a privileged position (recognized by Const. Court itself, judgment 347/2007). For some time, the Constitutional Court has recognized the ECHR, although it was introduced into our legal order by an act having the force of ordinary law and the status of "*source bringing back to an atypical competence*", whose rules would be "insusceptible to repeal or modification by part of the provisions of ordinary law" (see Const. Court no. 10/1993). In more recent times, the Court took note of the amendment of art. 117, co 1 , Const.[4], which, in its current version, obliges the Italian legislator to respect, in addition to the Constitution, the constraints arising, among others, from "*international obligations*". The Constitutional Court has qualified those rules, as reported by the case law of the European Court of Human Rights, which "*interposed parameters*" of constitutional legitimacy: under certain conditions, i.e., the Italian law that does not provide the rights and freedoms guaranteed by the ECHR and an adequate standard of protection may be declared unconstitutional. In practice, the law, in violation of the ECHR,

[4] Art. 117, par. 1, Const.: "*Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU-legislation and international obligations*".

infringes art. 117, co 1, Const. (see the famous “twin judgments” of Const. Court nos. 347 and 348/2007).

About the need that certain rights or freedoms must be respected, even in addition to those set by the national regulation, it is worth remembering the importance progressively assumed by the European Union sources. For a long time, the European Institutions have not frequently dealt with the subjective situations related to humans or to the person as such. The strong core of subjective situations covered by Community law has always been characterized by the so called "fundamental freedoms": the freedom of movement of workers, goods, services and capital, freedom of residence and the right of establishment of companies.

The Court of Justice, however, has begun to consider as part of the general principles of European law also the fundamental rights, and that “*in accordance with the constitutional traditions common to the Member States and the international instruments which the Member States have signed or cooperated*” (see C-97/87, 98/87, 99/87, *Dow Chemical Ibérica SA*). The Court has, thus, recognized as fundamental: the right to a fair remuneration (C-305/05, *Ordre des barreaux franchophones et germanophones*), the right to family reunification (C-540/03, *European Parliament*), the right to respect for private life (C-465/00, *Rechnungshof*), etc.

The activism of the Court of Justice is now potentially reinforced by the fact that, especially from the innovations introduced by the Treaty of Amsterdam (1997), although the primary law of the Union has over time explicitly contemplated the protection of fundamental rights. The Treaty on European Union (TEU), at art. 2, expressly states that the EU "*is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”*; and these values are “*common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail*”.

Of course, the right to a fair trial under art. 6 ECHR is relevant; it is worth mentioning that there is an identity of object of protection with art. 24 of the Italian Constitution, of which it specified the scope before the reform of the art. 11 of the Constitution on fair trial, which took place only in 1999. Therefore one could say that the ECHR, from this point of view, has also played an influential role on the process of revision of the Italian constitution, favouring the insertion within art. 111 of more precise provisions on fair trial (deriving from the case law of the Strasbourg Court and in reaction to a restrictive interpretation of the principles of adversarial process contained in the Code of Criminal Procedure of 1988, which was critiqued under the ECHR).

The regime of incorporation of rights of international or supranational origin inside the Italian legal system follows different rules, depending on the nature of the source of international law in question.

For customary international law article 10 of the Constitution provides for a system of automatic adjustment, without need for any formal act. Moreover, as recognized by the Constitutional Court in judgment 48/1979 (Russell), the ranks of the customary international law are hierarchically prevalent inside the system, and take precedence over any other provisions of national law (and the Constitution itself).

As for the civil rights that arise from international treaties, article 117 co. 1 of the Constitution (as introduced by Constitutional Law 3/2001) recognizes them as prevailing over other sources of national law (in this sense, the Constitutional Court 10/1993 had already followed this solution, even if only by way of interpretation). The treaties are ratified by the government, after the possible law authorizing the ratification (for the most sensitive matters: article 80 of the Constitution), assuming the obligation on an international level; at the same time an ordinary statute is usually needed to execute the dispositions inside the Italian legal system, to make them effective and binding also for the citizens (and not only for the Government). Even if such a process of execution is made by ordinary statutes, the effectiveness of the treaties is enhanced compared to the ordinary law in which they are incorporated, because they have the rank of article 117 of the Constitution.

Finally, EU law benefits from special status. Both the primary law (treaties), and the derived law (regulations, directives and decisions), enjoy the supremacy principle, and therefore prevail over domestic law (including constitutional). In addition, sources of primary law, general principles, and derived law enjoy – as appropriate – direct applicability or direct effects, and are therefore often directly productive of rights for the people. This means when the national courts find a conflict between EU rights and national law, it has to override national law (as stated in the judgment of the Constitutional Court 170/1984, Granital).

Furthermore, the adjustment of a national legal system to international law also takes place largely by an interpretation aimed at achieving compatibility between domestic and international provisions (*interpretazione adeguatrice*).

In the framework of international treaties, ECHR enjoys a special status. In fact, beyond the characteristics mentioned in the previous paragraph for all the international

agreements, for the ECHR system the case law produced by the Strasbourg Court is also recognized as binding, and helps to define the content of civil rights: the European Court of Human Rights (ECtHR) produces a lot of judgments in all the abovementioned fields.

It should be noted that this special status does not extend up to the level of pervasiveness recognized for EU law: in fact, it is impossible to have non-application of internal rules in contrast with the ECHR, but in such cases the ordinary courts must raise a question of constitutionality before the Constitutional Court (and the parameter is the abovementioned article 117, co. 1, of the Constitution, of which the ECHR is an "interposed parameter").

This attitude was reinforced by two key judgments of the Constitutional Court that recently focused on issues of economic rights: the decisions 348 and 349/2007 on the amount of compensation for expropriation and the *occupazione acquisitiva* (or *accessione invertita*).

With regard to *occupazione acquisitiva* the Constitutional Court in the past had permitted public power to come into unlawful possession of a private property and convert it to public use, without setting up a full public responsibility for the damage caused to the owner. Initially, in the ECHR system the case was not considered as conflicting with the principles concerning the protection of ownership, as enshrined in the Protocol 1 to the aforementioned Convention.

More recently, however, the Constitutional Court, acknowledging the case law of the Strasbourg Court (*Scordino* case: judgments of 29 July 2004 and 29 March 2006), recognized that the *occupazione acquisitiva*: (a) does not provide adequate protection of property rights, because ECHR requires that the damages will be paid out automatically in such cases, (b) does not qualify itself as expropriation (for it can be considered legitimate, with simple payment of fair compensation), but has to be qualified as untitled dispossession, contrary to article 42 Constitution as interpreted in the light of the findings of the ECHR, (c) does not guarantee compliance with the principle of legality (article 1 of the Protocol) in the absence of sufficient requirements of accessibility, accuracy and predictability of the procedural regime.

As mentioned in the previous paragraphs, to which we are referring here in detail, there is a different scope of protection available in the event of a conflict between supranational or international law in the protection of these rights and domestic law. Depending on the origin of the right in question, indeed, the possible behaviour for the court changes: if the law is laid down in the EU, the national ordinary judge will override the incompatible internal provision; if it is provided for in the ECHR (or in other international instruments), the ordinary courts

cannot override it, but have to raise the question of constitutionality for breach of article 117 co. 1.

In any case, however, the national courts have to attempt – where possible – an interpretation in accordance with international law, to save the apparently conflicting domestic law.

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As far as remedies activated at the international and supranational level are concerned, the most significant is an individual person's right to apply to the Strasbourg Court. The ECHR, indeed, as a subsidiary remedy has the competence to judge also on violations of civil rights once all domestic remedies have been exhausted. The Member State must comply with pecuniary reparation measures committed by ECHR, but also with individual or general measures provided to eliminate the human rights violation (and the Committee of Ministers of the Convention supervises the implementation of the decisions by the Court in Strasbourg). Italy allows for the implementation of such supranational decisions through the Government, which promotes collaboration between Parliament and the judiciary power: l. 12/2006 (execution of ECHR Judgments) which modified article 5 l. 400/1988 (on the activity of the Government).

QUESTION 4: EU CHARTER OF FUNDAMENTAL RIGHTS

Question 4: EU Charter of fundamental rights

- ✓ To what extent have the EU Charter of fundamental rights (and the civil rights it includes) as well as general principles of EU law protecting civil rights so far been recognized and referred to by the national authorities (legislators, governments, administrations, courts, equality bodies, Ombudsmen, etc.)
- ✓ How is the relationship between the EU Charter and the ECHR being perceived in your country? How is their respective scope of application identified, in particular in respect to civil rights?

Another pivotal source of fundamental rights is represented by the *Charter of Fundamental Rights*, which recognizes a range of personal, civil, political, economic and social rights of EU citizens and residents, enshrining them into EU law.

In June 1999 the European Council considered that it was appropriate to combine in a single declaration the fundamental rights enshrined in the European Union (EU), in order to give them greater visibility. The Heads of State and Government aspired to include in the Charter the general principles recognized in the European Convention on Human Rights of 1950 and those which result from the common constitutional traditions of the EU countries. In addition, the Charter had to include the fundamental rights granted to EU citizens, as well as economic and social rights set out in the *Council of Europe Social Charter* and the *Community Charter of Fundamental Social Rights of Workers*, as well as the principles derived from the case law of the Court of Justice and the European Court of Human Rights.

The Charter was drawn up by a Convention composed of one representative from each EU country and a representative of the European Commission, as well as members of the European Parliament and the national parliaments. It was officially proclaimed in Nice in December 2000 by the European Parliament, the Council and the Commission.

In December 2009, with the entry into force of the *Lisbon Treaty*, the Charter was granted the same legally binding effect of treaties. To this end, the Charter was amended and proclaimed a second time in December 2007.

Compared to the experience gained within case law, the solemn proclamation of the Charter of Nice in 2000 by the Community institutions represented the first attempt to arrive at a more precise formalization of the model of protection practiced in previous years. The catalogue of the rights of the Charter (grouped under six separate headings: dignity, freedoms, equality, solidarity, citizens' rights, justice) presents some new aspects compared to the

corresponding catalogues contained in national constitutions. In particular, following the development of new technologies in the field of communications or biology, there have emerged subjective positions that the most recent economic and social developments have left particularly in need of greater protection.

The failure of the EU to incorporate the Charter of Fundamental Rights of the EU within the text of the Treaty of Nice, left open the question of its legal effect, and divided scholars between supporters of the negative thesis (the Charter was to be understood only as a political act, which committed the EU institutions to ensure respect for the rights enshrined therein) and supporters of the opposite thesis of the legal value of the Charter (which, thus, could be used as a parameter by the Court of Justice). The so-called European Constitutional Treaty tried to overcome this uncertainty (signed in Rome in 2004, but then stranded throughout the course of ratification by the Member States). Now, following the approval of the so-called *Reform Treaty* (formerly called the *Lisbon Treaty*), which, as is known, has introduced a number of significant changes in earlier treaties, the problem has found its solution in art. 6 , par. 1, of the new text of the TEU. It states that "*it recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties*".

Thus, there is no doubt now that the Charter has acquired a secure legal status and it should be the main parameter for the Court of Justice in the resolution of disputes that concern an alleged breach of a fundamental right.

In order to complete the picture of the protection of fundamental rights by the EU, it is necessary to mention that art. 6, par. 2, TEU states that the Union accedes to the EU Charter, thereby anticipating a further and endemic issue of potential overlapping between different standards of protection.

In fact, these issues should not be overly exaggerated. The same Treaty, at art. 6, par. 2, precisely states that, with regard to the EU Charter, the rights, freedoms and principles enshrined by the latter always apply with respect to the powers of the Union, and that the fundamental rights should always be interpreted "in harmony" with the common constitutional traditions of the Member States (see art. 52, par. 4, of the Charter of Nice); regarding the ECHR, it is confirmed (Section 6.3) that the fundamental rights "are part of the Union's law as general principles" according to the interpretation that emerges in the case law of the Court of Justice.

The Charter of Fundamental Rights of the EU is peacefully recognized in the Italian legal system as binding, as well as the general principles of the EU.

The domestic case law in fact used the Charter already when it had only value as soft law; after the Treaty of Lisbon, with the recognition of the normative value of the fundamental rights (also) in the EU treaties system, also the Charter civil rights are considered – formally and in the substance – as binding. Even the Parliament and Government take into account rights in the EU Charter to implement legislative directives and decisions (with the annual Community law: cf. l. 234/2012) and to develop the activity of indirect administration of the EU policies.

With specific regard to civil rights, the EU Charter has therefore contributed to the scope of a lot of articles in the Italian Constitution: the formalization of EU civil rights inside the Charter gives new reference to the evolutionary process in the interpretation of the Italian constitution (using new EU rights with art. 2 Const., or interpreting art. 13 et seq. on the ground of EU rights).

The relevant EU charter dispositions in such a civil rights perspective are: 1-12 and 48-50.

- Art. 1: Human dignity
- Art. 2: Right to life
- Art. 3: Right to the integrity of the person
- Art. 4: Prohibition of torture and inhuman or degrading treatment or punishment
- Art. 5: Prohibition of slavery and forced labour
- Art. 6: Right to liberty and security
- Art. 7: Respect for private and family life
- Art. 8: Protection of personal data
- Art. 9: Right to marry and right to found a family
- Art. 10: Freedom of thought, conscience and religion
- Art. 11: Freedom of expression and information
- Art. 12: Freedom of assembly and of association
- Art. 47: Right to an effective remedy and to a fair trial
- Art. 48: Presumption of innocence and right of defence
- Art. 49: Principles of legality and proportionality of criminal offences and penalties
- Art. 50: Right not to be tried or punished twice in criminal proceedings for the same criminal offence

Such a role played by the Charter in the interpretation of the Italian Constitution, it should be noted, is limited by the so-called horizontal dispositions of the same Charter of Fundamental Rights: it has to be applied in respect of the EU competences and only inside the boundaries of EU attributions.

The question of the relationship between the ECHR and the EU Charter of Rights is topical, and perceived as central in the Italian legal system: as already seen, indeed, two different statuses to the EU and ECHR rights are provided by the Italian legal order, and so it is essential to define where it is a question of application of ECHR law and not of EU law. Such a problem, despite some attempts to extend the disapplication also to the ECHR system (Council of State 1220/2010; contra, see Constitutional Court. 80/2011): in fact, only the rights provided for by the Charter of fundamental Rights of the EU benefit from the un-application power.

For the civil rights, the cases of overlap between the EU and ECHR provisions do not arise on the literal level (or they are very rare, due to the usual analogy of formulations), but on the interpretative one: the question is to which system it is to give preference if the ECJ and the Strasbourg Court follow different solutions to protect the same civil right (e.g. to what extent the family life ex art. 29 et seq. Constitution is corresponding or not to family life of art. 9 of the Charter on the one hand, and to the art. 8 ECHR, and what extent its effects also reflect on families founded not by marriage).

In all these cases the Italian legal system does not assume an original position in the European framework, but it follows the well-established set of Bosphorus (30 June 2005). It is then assumed (without specific demonstration case by case) that EU law respects the rights of the ECHR, if the possible conflict arises in an area of EU competence, and – therefore – the Strasbourg Court will refrain in all those cases from further checks (unless the member state had no discretion in adapting its legal system to the rights provided by the EU: in such a hypothesis a second check by ECHR will be possible).

Moreover, now the accession of the EU to the ECHR is pending, and a draft of the treaty to accession is already available.

QUESTION 5 : JURISDICTIONAL ISSUES

Question 5 : Jurisdictional issues

- ✓ Personal
  - ***Who*** is covered by (core) civil/civic rights protection? Are both natural and legal persons covered? Are citizens of that state, EU citizens, third country nationals (refugee, long term resident, family members, tourists, etc.) given protection?
- ✓ Territorial
  - What is the territorial scope of the protection of civil rights afforded by your member states? Are there ***territorial*** limitations to such protection? Which?
- ✓ Material
  - Are rights protected differently in different ***policy areas*** (e.g. security exceptions, foreign policy exclusion, etc.)?
- ✓ Temporal
  - What is the temporal scope of protection afforded to civil rights? Have there been recent changes in the range and reach of civil rights protection?
- ✓ Please offer details as to how different rights are afforded to different ***categories of persons*** in ***different locations and policy contexts over time?***

For clarity, we decided to answer this question, following the proposed layout. For the sake of brevity, we have tried to give a precise answer, though schematic, to the issues that might otherwise require several pages of elaboration.

Personal

From a general point of view all people are protected by civil rights, except for the possibility for ordinary law to establish some differences with respect to the effective exercise of the right, due to the peculiarities of the environment. Referring, for example, to the case of foreigners, their legal status is governed by law, in accordance with the provisions of international law (art. 10, par. 2, Const.). Hence the extension that, on the basis of articles 2 and 3 Const., the Constitutional Court has, for a long time, made to foreigners of the enjoyment of the inviolable rights. International law contemplates, indeed, many cases of "rights" that must be guaranteed to all. In any case, we can assert that the Constitutional Court takes a different reasonable attitude. For example, with respect to "rights" or "freedoms" that the Constitution grants to any person, the extension is automatic (see the case of the right of defence or the freedom of expression). The same is true with regard to those fundamental "classic" freedoms that are not textually referred only to "citizens" (i.e. personal liberty or the

right to family unity). Conversely, where the Constitution refers only to "citizens", the Court distinguishes the cases: in particular, it tends to favour the extension to foreigners even in these cases, but it sometimes admits the possibility of restrictions or distinctions about the actual enjoyment of a subjective situation (see, for example, in the case of freedom of movement).

The Constitutional Court established that, when we are dealing with fundamental rights (among which it also refers to health, housing, education and right to marry) a distinction based on nationality is not legitimate, with regard to the entitlement of rights (see, for instance, Const. Court judgment 61/2011). With respect to the enjoyment of these rights, the legislature can differentiate, but only when it is necessary to protect other equivalent rights and when it is not unreasonable / arbitrary or disproportionate. This consideration also applies to illegal aliens (with respect to fundamental rights, see Const. Court 61/2011, 269/2010, 252/2001).

Territorial

If the term "territorial" is understood in a geographical sense: there are no differences or limitations in the application with reference to the coverage of civil rights within the country. It is worth recalling that the Italian Republic is not a federal State and so regional governments have not normally competence on issues related to civil rights. There are, however, specific provisions with regard to linguistic minorities tied to the territory of residence. See, for example, the case of Trentino-Alto Adige, Friuli, Valle d'Aosta (as well as some other Italian regional areas) and the use of language and its special protection. The Constitutional Court stated that this special protection enjoyed by the recognized minority languages follows the territorial criterion and not the personal one: it can be exercised only in the geographic areas established by the law of reference (areas of historic settlement of minorities: see Autonomous Province of Trento law 6/2008 and the Const. Court judgment 159/2009).

Material

Even civil rights, like any rights provided for in the Constitution, are subject to a necessary balance, defined as a technique by which the legislator (and possibly administration) in the first place, and the Constitutional Court in the second round (checking balances identified in the several acts), determines how much and how individual rights can

and shall be limited to allow the pursuit of other interests. From this perspective, any civil rights provided by the Italian Constitution may be restricted to allow for the protection of public order, security, health and safety, general morality, etc.

What is important to remember is that civil rights, unlike most of the social rights, enjoy – in the case of need for these compressions - the special guarantee of the "*riserva di legge*"[5] and - in more detail - of so called "reinforced" legal reserves. Articles 13 and following, in fact, explicitly establish that rights therein guaranteed may be restricted only by law; furthermore, the identification of cases and the related rules is reserved to the Parliament, but it is even the Constitution itself that provides eligible justifications, which are to be considered as mandatory justification: thus, for example, domicile may be subject to inspections, but for reasons of public health and safety or for economic and tax purposes (article 14); the restriction of freedom of movement can only be done for reasons of health and safety (article 16); meetings can be prohibited only for reasons of security and public safety (article 17); associations may be prohibited only if they are secret, as well as those organized, even indirectly, for political purposes by military organizations (article 18); freedom of religion and worship is permitted, provided that the rites are not contrary to morality (article 19); freedom of press can be limited only if contrary to morality (article 21), etc.

Obviously even the special legislation, except in cases of reinforced legal reservation with respect to the civil rights strictly provided in articles 13 ff. (and particularly in the civil rights directly arising by Article 2, or by broad and evolutionary interpretations of articles 13 ff.), may impose limitations, provided for constitutionally valuable interest, and therefore typically for the protection of public order, security, morality, etc. There are numerous cases of criminal justice, for which we make reference to the annexes listing legislation and case law at the end of this report (noting art. 13, where we reported the provisions for the fight against terrorism and illegal immigration). With respect to the immigration issue, it is worth mentioning the special case of centres for identification and expulsion (*Centri di identificazione ed espulsione* (CIE)): established by art. 12 of Law 40/1998, they are structures in which the freedom of movement of aliens, pending measures related to their status, is limited, since they are lacking a regular residence permit; art. 14 of T.U. 286/1998 (as amended by law 189/2002 and 94/2009 and Decree transposing the Repatriation Directive,

[5] It is not so easy to find a correct translation for this term in the English legal language. So we decided to use the Italian version. It refers to that portion of the regulative legislative power which can only be exercised by a legislative level source of law under the Italian Constitution.

law 129/2011) provides that detention within this "CIE" is ordered by the Police for a period of 30 days, renewable for a maximum of 18 months, "*when it is not possible to immediately put in place the expulsion by escorting to the border or the refoulement, due to temporary situations that hinder the preparation of return or the performance of removal ...*".

On these assumptions, which have no direct anchor in reinforced legal reserves, we can make reference to a case relating to the treatment of personal data. There could be possible compressions of rights in particular with reference to situations of national security (see regulations on data retention with reference to the protection of personal data (art. 132 Italian Data Protection Code)) or an emergency.

To conclude on the material profiles of civil rights, it is important to remember the Italian distinction between *diritti soggettivi* and *interessi legittimi* (subjective rights and legitimate interests). Indeed, judicial control is realized by both ordinary judges (*giudice ordinario*) and administrative judges (*giudice amministrativo*), who respectively protect the rights or legitimate interests. Civil rights are usually, by their constitutional nature, *diritti soggettivi* because the public administration discretion do not change the nature of individual rights; nevertheless, sometimes their limitation for public interest can determine a so called degradation to the level of *interesse legittimo*, and this means that the protection is less strong because the public administration is able to evaluate as prevalent the public interest sacrifing the legitimate interest of the person, even if in origin it was a civil right (e.g. for public security reasons the freedom of information can be reduced and public administration can prohibit the distribution of some periodical publications – seizing them – and in this case the editor has only an *interesse legittimo* against the public administration act, and not a right).

Temporal

From a temporal point of view, the development of civil rights reports the aforementioned trends described with reference to ordinary legislation implementing the constitutional provisions. In particular, in order to reconstruct a common perspective, it should be noted that civil rights means a catalogue of legal claims that - even if listed in the constitution - can never be exhaustive. From this perspective, all the changes that have occurred over time can be seen as the adaptation of that catalogue of rights to the new demands posed by the changing realities in which those legal positions must be invoked: the scientific, technological and social developments caused problems, hitherto never experienced

(assisted procreation, privacy on the Internet, etc.), that needed an answer and a discipline from the law.

In this sense, two series of cases must be identified in which civil rights, even if provided with precise provisions in the Constitution, have undergone significant changes.

First of all, on the one hand, there were some necessary changes in the ways in which the legal positions provided for in articles 13 ff. of the Constitution have been put forward in the course of time, in reliance on the fact that new problems arose: for example, the personal freedom of art. 13 has experienced an application in conjunction with art. 32 in order to adjust invasive diagnostic tests (eg. drug testing); domicile under art. 14 justified special protections on the regulation of internet service providers; freedom of religion had to deal with new immigrant communities; the needs of trial defence led to regulation of forms of interceptions that were not possible in the past and to extend these investigative opportunities even to the defence, etc. Those referred to in articles 13 ff., however, still remain freedoms largely due to the original approach, and these changes - needed to respond to the changing reality - do not upset the classic approach.

Alongside these changes over time, however, it is worth mentioning a few cases in which on the basis of article 2 of the Const. (cited above) truly new fundamental rights have been developed, in order to respond to new demands. In this area there are the more radical developments, such as in the area of privacy, as asserted with increasing force in the information society, or, for example, in all matters pertaining to the so-called bio-law, with respect to the more ethically sensitive issues that the medical sciences pose to law, on the regulation of early and late stages of human life (medically assisted procreation, abortion, euthanasia, etc.). In all these areas, also in the Italian legal system, the most radical changes are reported in relation to how civil rights are understood (see, for instance, the Law 194/1978 on abortion, first considered a crime until the Constitutional Court judgment 27/1975, or the law 40/2004 on medically assisted procreation, on which further developments must be report as imposed by the Constitutional Court in the judgment 151/2009).

QUESTION 6 : ACTORS

Question 6 : Actors

✓ What is the involvement of private or public actors, such as human rights institutes, equality bodies, data protection agencies, national Ombudsmen, NGOs, etc., in defining and setting civil rights standards (influencing legislative, regulatory, administrative or judicial processes). Note that this question is not about enforcement. It focuses on actors involved in the drafting or establishment of civil rights norms.

The role that the private and especially public actors play with reference to the definition and establishment of civil rights standards is certainly crucial. This activity is structured in a series of interventions aimed at giving concrete implementation of those principles which are laid down, in a necessarily general and abstract way, in constitutional and/or in ordinary provisions.

As we mentioned above, the civil rights area usually involves negative freedoms, with respect to which any subjects different from the entitled person of the rights are essentially carriers of a mere obligation to refrain from interfering. From this perspective, the real and leading actor of civil rights seems to be the beneficiary of the same.

The section of our legal order devoted to civil rights is, in fact, characterized by a very classic approach to protection. These freedoms, understood in a strict sense (negative freedoms), are rights which require a protective intervention of the State, carried out by its traditional apparatus: the judiciary system and law enforcement. Nevertheless, as seen in the reconstruction of the legislative framework, there have been more actual changes in the direction of promotion and protection of civil rights. In these cases, the extent of legal positions related to civil rights gave occasion to the emergence of promotional activities also by private actors (NGOs and - in general - the associations and the so-called third sector, often active together with co-operatives and NGOs not only in the field of social rights, but also of civil ones). Furthermore, the administrative activities, traditionally oriented to an external perspective of the protection of civil rights, have recently taken even more modern organizational forms, working also through the activities of independent administrative authorities and agencies outside the traditional ministerial team (on this point, data protection authority is an example).

With respect to this latest point, the work done by the "Data protection authority" could be taken as a paradigmatic example, with respect to the application and implementation of the rules regarding the right to privacy. This administrative actor has a whole range of tasks, among others duly recognized and described in the Italian Data Protection Code. It is an independent administrative authority established by the so-called Privacy law (Law 31 December 1996, no. 675) - which has implemented into Italian law the EU Directive 95/46/EC - and today governed by the already mentioned Italian Data Protection Code (legislative decree 30 June 2003, no. 196). The Authority is responsible for all areas, public and private, where we need to ensure the correct processing of data and respect of the rights of persons connected with the use of personal information.

It is concerned, among others, with:

- checking that the processing of personal data complies with laws and regulations and, where appropriate, prescribing to data controllers and data processors for the measures to be taken to properly carry out the treatment;
- investigating complaints and allegations and deciding appeals under article 145 of the Code regarding the protection of personal data;
- prohibiting, in whole or in part, or stopping the processing of personal data which, by their nature, by the manner or by the effects of their treatment, may represent a significant injury to the person concerned;
- adopting the measures envisaged by the legislation on personal data, including, in particular, general authorizations for the treatment of sensitive data;
- promoting the signing of ethics and good conduct codes in various areas (consumer credit, journalism, etc.);
- reporting, when appropriate, to the Government of the need to adopt specific regulatory measures in economic and social life;
- joining the discussion on regulatory initiatives with hearings held in Parliament;
- delivering opinions requested by the Chairman of the Board or by each minister on regulations and administrative measures likely to affect matters covered by the Code;
- preparing an annual report on its activities and on the implementation of privacy legislation to be submitted to Parliament and the Government;

- participating in community activities and international trade, as well as a member of the Article 29 Working Party and the common control authorities provided by international conventions (Europol, Schengen, Customs Information System);
- ensure the maintenance of the register of the treatments formed on the basis of the notifications referred to in article 37 of the Code regarding the protection of personal data;
- ensuring the information and public awareness with regard to the processing of personal data and on the security measures of the data;
- involving citizens and all stakeholders in the results of the public consultations, taking them into account in the preparation of measures in general.

QUESTION 7 : CONFLICTS BETWEEN RIGHTS

Question 7 : Conflicts between rights

✓ How are the different sources of rights interrelated? Is there (potential) overlap? Are there inconsistencies? What are the mechanisms in place to determine how they should be addressed?

✓ Are there, in your countries, notorious or problematic clashes between particular civil rights, or between civil rights and other rights, between individual civil rights and important public interests?

Please give examples, and illustrate how these conflicts are dealt with and resolved.

In a practical application, cases of conflict between civil rights can arise. The body charged with solving this type of issue is the Constitutional Court (although in the first instance the ordinary courts also play a role). In this context, the so-called "balancing test" certainly plays a pivotal role. Without any claim of completeness, the issue will be briefly described as following: it consists in a technique used generally by all the constitutional courts to resolve questions of constitutionality when a conflict between the rights or interests is reported. The rights and constitutional freedoms are expressed as principles. The principles are a type of rule of law, which is distinguished by the rules, since they have a high degree of generality and unsubstantiated. Considered in the abstract, the principles do not ever collide; the conflicts between them systematically occur in the concrete application. In many cases the Constitution itself indicates in the name of what interests the constitutional right may be limited (i.e. the morality that limits the freedom of worship and the expression of thought). In this way the constituents primarily intended to limit the discretion of the legislator or public authorities in bringing those specific restrictions to freedom. We can identify at least three cases of conflict between interests (or rights): a) competition between different subjects in the enjoyment of the same right; b) competition between not homogeneous individual interests (see the abortion conflict that sees heterogeneous interests claimed by different parties: Const. Court, judgment n. 27/1975); d) competition between individual interests and collective interests. In order to solve these issues, the Constitutional Court proceeds with assessments, some of which resemble and partly overlap with those typical of the judgment of

reasonableness. First of all, it reconstructs the rationale and assesses the legitimacy of the purpose of the law in question; then it evaluates the appropriateness of the means to the end; finally, it proceeds to judgment of proportionality: it estimates the cost of the protection afforded to an interest. The trial balance is an art, something that is based on criteria of reasonableness and common sense rather than on the strict interpretation of the Constitution.

The conflict, however, may also arise between constitutional principles and European regulation. The Italian Constitutional Court admitted that European regulation may involve derogations from some constitutional norms, but not from the fundamental principles of the Constitution (this is the so-called “theory of counter-limits: v. Const. Court, Judgment n. 30 and 31/1971). In practice, to date, the detailed rules waived by European legislation affect all divisions of power between the state and the regions, but in perspective, the series may become more complex. The Court has thus paved the way for making further and very significant progress towards the EU without having to carry on a constitutional amendment. The real problem, however, especially from our perspective, is when the European regulation infringes a "fundamental principle" of the Constitution. If this happens, the only way forward is to challenge the only provision having the force of law in our legal system, under which all European regulation must be applied in Italy: that is the order of execution of the Treaty. This is an “empty formula” that may be contested an unlimited number of times “*to the extent to which*” it allows entry into our law of that specific European rule that is incompatible with the principles of our Constitution.

With reference to European law, the Constitutional Court has embraced the so-called "dualistic theory" as a basis for understanding the relationship between European and national legal order. This theory has its roots in a traditional view of the "nature" of the EU: a common organization created by sovereign states with instruments of international law. In its rapid growth, however, the EU has developed tools, reports, authorities often similar to those typical of federal states. In light of this, the dualistic theory is inadequate in describing the real relations between the two jurisdictions. The paradox is that we have two "independent and distinct" systems with regard to the legislation, but united with regard to the application of the law: this leads to an overlap of the two systems of courts, which multiplies and crosses procedural instruments. A judge, therefore, faced with a conflict between internal and European norms, should follow a logical series of decisions. First of all, he/she must decide whether the "matter" is the responsibility of the State or the EU; but if the Union has enacted the norm, that means that it is supposed to have the power. So if the judge believes the opposite, he/she may challenge the act in front of the European Court of Justice of the

European Union ("*rinvio pregiudiziale di validità*"). He/she must then determine whether the European norm has or has not "direct effect". In case of doubt he/she suspends the trial and to raise a question of interpretation before the Court of Justice. When the European norm is not self-executing, but it expresses a principle, the court may be in doubt about the compatibility of the Italian legislation with it. Such doubt must be solved by raising a question of interpretation before the Court of Justice. If the rule that the Court of Justice derives from the interpretation of the European provisions has characteristics sufficient to produce "direct effects", the Italian judge shall then apply it or not apply according to the internal norm. If the Italian court directly determines that the European norm is not self-executing, it challenges the contrasting Italian law before the Constitutional Court. Finally, if the court doubts the compatibility of the European norm with "supreme principles" of the Constitution, it challenges before the Constitutional Court the order of execution of the Treaty, as we saw above. Given that, after the Treaty of Maastricht, the recognition of fundamental rights as a "constitutional" limit to European legislation has become explicit, the court may, instead, prefer to directly challenge the norm before the European Court of Justice.

Below are three notorious cases regarding clashes among rights.

The case of the crucifix in classrooms

A case of particular friction between the guarantees laid down by the Constitution for certain freedoms, and the existence of rules that seem to contradict them, is related to the exposure of the crucifix in classrooms. The problem concerned the possible doubt about the current validity of an old provision, of a regulatory nature, which established the compulsory display of this symbol, despite the express constitutional recognition of religious freedom and the supreme principle of state secularism (defined as such by the Constitutional Court: case n. 203/1989). The administrative judges, interested in the matter by the parents of some pupils, decided that the obligation was still in force. They have, in fact, qualified the crucifix as a symbol confirmatory and affirming the republic's secularism, since it refers to a "culture" of solidarity and equality that would be implied even in articles 2 and 3 of the Constitution (TAR Veneto, no. 1110/2000; the State Council, n. 556/2006). The parents then turned to the European Court of Human Rights (*Lautsi* case) that at first (Second Chamber, 3 November 2009) "condemned" the Italian government for having violated the right of parents to educate their child according to their beliefs, and then (Grand Chamber, 18 March 2001) backtracked, arguing, inter alia, that the State has a certain margin of discretion in this matter and that in the majority of the Member States of the Council of Europe the simple display of the symbol

would not be unambiguously considered as detrimental to the fundamental rights of students and parents.

Jehovah's Witnesses and blood transfusion

From the few cases provided by law, anyone can refuse to be subjected to medical treatment. Then the individual will prevails. And what if the individual freely chooses to refuse medical treatment, essential for his or her survival? The problem arises quite often. For example, for religious reasons, Jehovah's Witnesses are obliged to refuse blood transfusions. The (legal) problem does not arise where the refusal is from an adult capable of discernment: instead it becomes dramatic when parents refuse permission to transfusions for their minor child. The right and duty to maintain and educate their children, that art. 30 Const. imposes on the parents, is here in competition with the right to religious freedom of the parents themselves: to what extent can their religious choices affect the life of the child? The Supreme Court (*Corte di Cassazione*, section I pen., judgment 13 December 1983) solved the problem by stating that: a) the religious profession cannot be taken on the basis of a declaration of incapacity of parents (which would allow a replacement intervention by the public bodies), but that b) you are out of the exercise of religious freedom when it is expressed in behaviours contrary to obligations and prohibitions that "*in the context of a civilization everybody considers as needed to an orderly civil life*". The parents, who denying the permission caused the death of their daughter, were convicted of manslaughter.

Personal liberty (self-determination): Englaro case

A famous case that kept all of Italy in suspense is that of Eluana Englaro. She was a twenty-year-old woman, victim of a car accident on 18 January 1992 and reduced after this to a permanent vegetative state. Once the irreversibility of the prognosis was established, her family sadly asked doctors to suspend artificial nutrition and hydration (as, “unfortunately”, Eluana was able to breathe by herself). None of their demands was heard, mainly because of the total lack of legal protection for physicians who might have agreed to cooperate in suspending these vital treatments. Eluana’s parents also argued that, by reconstructing the lifestyle and beliefs of her strong and independent daughter (expressed, inter alia, shortly before the accident, during a hospital visit to a friend who suffered the same fate) she would never have wanted to live in those conditions, irreconcilable with her bright personality and her will.

In 1999 a troubled legal battle began, carried out by Eluana's father, Mr. Beppino Englaro, who was also her legal guardian. Different parties intervened in the "management" of the case: the Court of Cassation (16 October 2007, n. 21748), the Milan Court of Appeal (sec. I – Civil, decree 9 July 2008, which granted the interruption of vital treatment), the Government (which worked frantically to a specific bill), the Catholic Church and the whole country; but, while all of these parties were scrambling to find a fair solution to the "Englaro case", Eluana died on 9 February 2009. An autopsy was conducted on her body after her death, which showed that the cause of her death was a cardiac arrest brought on by dehydration.

On 27 February 2009, the Public Prosecutor of Udine placed under investigation Beppino Englaro, the head physician Dr. De Monte, and the nurses who participated in the implementation of the Court of Appeal judgment on charges of aggravated murder, but at the beginning of 2010 the case was filed.

The "Englaro" case sums up the eternal conflict between the public interest in the protection of private life and the individual right to therapeutic self-determination. The issue becomes even thornier where such a subjective legal situation must be recognized in a person incapable of discernment, who no longer has a way to communicate outside her own choices in life. Indeed, the problematic nature of this case lies in the main subject of the story: a human person whose will is reconstructed through the use of the so called "advanced directives" for medical treatment.

Freedom of information and freedom of thought in the mass media system: the Europa 7 case:

"Europa 7" (an Italian television company) is the title of an important case law on freedom of thought decided by the Italian Constitutional Court, the Court of Justice and the European Court of Human Rights.

Herewith, a short summary of the case: Europe 7 participated in the public tender for the allocation of national television frequencies, under Law 249/1997; in 1999 it won some television frequencies. The legislature and the government, however, extended the concessions to existing societies (for example, the one that used the frequency for Rete 4), so that Europe 7 could not start its own business.

The Constitutional Court (decision 466/2002), confirmed that no private person can own more than 20% of television frequencies: then Rete4 would have to stop broadcasting in

analogue-terrestrial. The Court, however, considered partially not unconstitutional the extensions.

Pursuant to Law Decree n. 352/2003 the "excess networks" were expected to be able to continue broadcasting on frequencies already in use by them; by Law no. 112/2004 the reassignment of the spectrum of analogue licenses was blocked, pending the complete switchover to digital terrestrial with a different assignment of frequencies.

In July 2005, the Consiglio di Stato of Italy (State Council), urged by Europa 7, asked the European Court of Justice for a preliminary, and the judgment of 31 January 2008 in Case C-380/05, offered an interpretation favorable to Europa 7, based on the directives and on the right to information on free and plural bases, recognized as a general principle in Union law,.

The judgment of the European Court of Justice of 31 January 2008 stated that the television system in Italy is not in conformity with European legislation requiring objective, transparent and non-discriminatory allocation of frequencies.

The Council of State in judgment 242/2009 thus established for a compensation of over € 1 million, but later the matter was closed by a ruling of the Strasbourg Court of 7 June 2012 (Application no. 38433/09), through which – also recalling the art. 11 of the Charter of Nice – it was decided for a compensation of € 10 million for injury: among other things, there was an injury to freedom of information as related to the right to express thoughts.

As it is clear from the brief summary of the case, the point at issue was the exclusion of a company from a TV broadcast, in order to benefit – by means of such exclusion – the existing oligopoly in the Italian TV enterprises system. Even the right to freedom of thought (which the media are instrumental) has been applied: the Constitutional Court could also invoke art. 21 of the Constitution in order to declare the unconstitutionality of the existing situation (but the constitutional adjudication in Italy did not challenged the transitional application of the law, and therefore Europa 7 was anyway not able to start its activity).

Similarly, also the super national courts in Europe had to decide this case and the decision was based also on the freedom of expression rights. The Court of Justice of the European Union, in particular, in addition to EU directives on concentrations in the television industry applied – as a general principle of EU law – the principle of pluralism of sources of information stated in art. 10 of the ECHR (it must be noted that at the time the Charter of Nice had not yet binding). Conversely, even the Strasbourg Court was asked to rule on a compensation for the benefit of Europe 7, and as part of this complex story could also rely – for its role, in fact, even outside the context of the European Union – the art. 11 (2) of the

Charter of Fundamental Rights of the European Union on freedom of expression and information.

ANNEXES

National provisions[6]

Personal liberty:

Relevant legislation:

- Codice di procedura penale (1988, modello accusatorio)
- r.d. 773/1931 (Approvazione del testo unico delle leggi di pubblica sicurezza);
- l. 1423/1956 (Misure di prevenzione nei confronti delle persone pericolose per la sicurezza e per la pubblica moralità);
- l. 327/1988 (Norme in materia di misure di prevenzione personali);
- d.lg. 286/1998 (Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero);
- l. 189/2002 (Modifica alla normativa in materia di immigrazione e di asilo);
- d.l. 241/2004 (Disposizioni urgenti in materia di immigrazione);
- l. 354/1975 (Norme sull'ordinamento penitenziario e sull'esecuzione delle misure privative e limitative della libertà);
- d.l. 144/2005 (misure urgenti per il contrasto del terrorismo internazionale);
- d.l. 249/2007 (Misure urgenti in materia di espulsioni e di allontanamento per terrorismo e per motivi imperativi di pubblica sicurezza);
- l. 38/2009 (Conversione in legge, con modificazioni, del decreto-legge 23 febbraio 2009, n. 11, recante misure urgenti in materia di sicurezza pubblica e di contrasto alla violenza sessuale ed introduzione del c.d reato di stalking);
- l. 94/2009 (Disposizioni in materia di sicurezza pubblica)

Relevant Constitutional Court case law:

- Constitutional Court case law on personal liberty:
- nozione di libertà personale: l. 2 e 11/1956; 45/1960; 30/1962; 72/1963; 68/1964; 52/1967; 68/1964; 144/1970; 13/1972; 62 e 419/1994; 210/1995; 194/1996; 105/2001;
- forme di restrizione della libertà personale, e relative garanzie: 21/1957; 29/1962; 26/1966; 512/2002;
- misure di prevenzione: 27/1958; 23 e 68/1964; 144/1997;
- espulsione dello straniero: 105/2001; 222 e 223/2004;
- diritti dei detenuti: 349/1993; 351/1996; 526/2000;
- limiti massimi della carcerazione preventiva: 1/1980, 15/1982, 292/1998; ord. 397/2000;
- misure cautelari: 265/2010; 231/2011, 233/2011, 331/2011, 110/2012; 57/2013; 213/2013.

[6] We decided to keep the Italian (official) terminology when referring to national legislation and case law.

- ingiusta detenzione cautelare: 219/2008

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Home inviolability:

Relevant legislation:

- Codice di procedura penale (1988, sistema accusatorio, in particolare le disposizioni su ispezioni e sequestri: titolo III, mezzi di ricerca della prova, artt. 244 ss.)
- r.d. 773/1931 (Approvazione del testo unico delle leggi di pubblica sicurezza);
- l. 98/74 (Interferenze illecite nella vita privata);
- l. 152/1975 (Disposizioni a tutela dell'ordine pubblico);
- l. 547/1993 (Modificazioni ed integrazioni alle norme del Codice penale e del codice di procedura penale in tema di criminalità informatica);
- l. 63/2001 (Modifiche al codice penale e al codice di procedura penale in materia di formazione e valutazione della prova in attuazione della legge costituzionale di riforma dell'articolo 111 della Costituzione).
- l. 397/2000 (Disposizioni in materia di indagini difensive);
- limitazioni imposte per motivi di sanità ex art. 14, 3° co., Cost.: l. 283/1962 (Disciplina igienica della produzione e della vendita delle sostanze alimentari e delle bevande);
- limitazioni imposte per motivi economici e fiscali art. 14, 3° co., Cost.: d.p.r. 520/1955 (Riorganizzazione centrale e periferica del Ministero del lavoro); d.p.r. 633/1972 (Istituzione e disciplina dell'Imposta sul valore aggiunto);
- limitazioni imposte per motivi di incolumità pubblica ex art. 14, 3° co., Cost.: d.lg. 286/1998 (t.u. delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero)

Relevant Constitutional Court case law:

- nozione costituzionale di domicilio: 104/1969; 56/1973; 106/1975;
- estensione della nozione di privata dimora: 88/1987;
- limiti posti dalla Costituzione alla tutela del diritto alla libertà di domicilio: 45/1963; 61/1964; 10/1971;
- limiti oggettivi alle limitazioni della libertà domiciliare: 8/1956; 26/1961; 4/1977;
- garanzia della riserva di giurisdizione e sulle forme di tutela della libertà domiciliare: 173/1974; 110/1976;
- compatibilità delle riprese visive a fini investigativi con la disciplina costituzionale del domicilio, sentenza 135/2002

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Freedom and secrecy of communication and corrispondence:

Relevant legislation: • codice penale: artt. 615-bis ss. e 616 ss. (fino al 623-bis) • codice di procedura penale: artt. 266 ss. in materia di intercettazioni • D.Lgs 196/2003 (codice per la protezione dei dati personali • d.P.R. 156/1973 (testo unico postale) Relevant Constitutional Court case law: • Judgments: 173/2009; 127/2005; 275/2004; 267/2002; 128/2000; 281/1998; 420/1994; 81/1993; 366/1991; 1030/1988; 34/1973

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Freedom of movement and residence:

Relevant legislation: • codice penale, artt. 215, 1° co., e 233 (misure di sicurezza limitative della libertà di circolare sul territorio nazionale); • legislazione limitativa della libertà di espatrio: l. 1185/1967; c.p.p., art. 281; • legislazione limitativa della libertà di circolazione per motivi di sicurezza: l. 1423/1956, art. 2; l. 327/1988; c.p.p., art. 283.
Relevant Constitutional Court case law: • nozione di libertà di soggiorno: 53/1957; • differenza tra le misure limitative della libertà personale e quelle incidenti sulla libertà di soggiorno: 105/2001; • divieto di restrizioni determinate da ragioni politiche: 19/1959; • nozione di sicurezza idonea a limitare la circolazione: 2/1956, 161/1980; • limitazione alla circolazione tra regioni sentenze: 12/1963, 51/1991, 264/1996, • limitazione amministrativa alla libertà di circolazione per soddisfare l'esigenza di buon uso delle strade: 12/1965; • libera circolazione delle persone all'interno della UE: 2/2013

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Freedom of assembly:

Relevant legislation:

- disposizioni generali: artt.18, 25, 26, 27, 28, t.u.l.p.s.;
- scioglimento delle riunioni in luogo pubblico: artt. 22, 23, 24, t.u.l.p.s.;
- divieto di portare armi nelle riunioni in luogo pubblico o aperto al pubblico: art. 19, t.u.l.p.s.; art. 4, l. 110/1975 (Norme integrative della disciplina vigente per il controllo delle armi, delle munizioni e degli esplosivi);
- rapporti tra libertà di manifestazione del pensiero e libertà di riunione in luogo pubblico: artt. 20 e 21, t.u.l.p.s.; art. 654, c.p.; art. 5, l. 645/1952 (Norme di attuazione della XII disposizione transitoria e finale, 1° co., della Costituzione - fascismo); artt. 1, 2, 5, d.l. 122/1993 (Misure urgenti in materia di discriminazione razziale, etnica e religiosa);
- riconoscibilità dei soggetti partecipanti alle riunioni in luogo pubblico: art. 5, l. 152/1975 (Disposizioni a tutela dell'ordine pubblico);
- spettacoli e i trattenimenti pubblici: artt. 68 ss. e 82, t.u.l.p.s.;
- diritto di assemblea: art. 20 Statuto dei lavoratori (l. 300/1970).

Relevant Constituional Court case law:

- questione della legittimità delle riunioni in luogo pubblico non preavvisate: 9/1956, 54/1961; (ord.) 27/1956;
- questione della punibilità degli oratori nelle riunioni in luogo pubblico non preavvisate: 90/1970, 11/1979;
- non irragionevolezza del termine di preavviso di tre giorni per le riunioni in luogo pubblico sentenza 160/1976;
- incostituzionalità del preavviso nelle riunioni in luogo aperto al pubblico: 45/1957, 27/1958;
- nozione di armi e di oggetti atti ad offendere: 79/1982.

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Freedom of association:

Relevant legislation:

- codice penale: artt. 270-270 bis;
- codice civile: artt. 11-42, 2500 septies, 2500 octies;
- legislazione speciale: d.l. 43/1948; l. 17/1982; artt. 10, 13 bis, 108-111 ter, d.p.r. 917/1986; artt. 14, 28, 30, l. 49/1987; l. 266/1991; l. 381/1991; l. 67/1992; d.l. 337/1996; d.l. 460/1997; d.l. 153/1999; l. 383/2000; l. 152/2001; d.l. 207/2001; d.l. 374/2001; l. 206/2003; d.lg. 155/2006

Relevant Constitutional Court case law:

- judgments: 69/1962; 114/1967; 11/1968; 40/1982; 239/1984; 193/1985; 417/1993; 248/1997; 365/1997; 50/1998; 243/2001; 300/2003; 301/2003.

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Freedom of religion and conscience:

Relevant legislation:

- Codice penale: artt. 402-406;
- Chiesa Cattolica: l. 810/1929 (Esecuzione dei Patti lateranensi); l. 121/1985 (Legge di ratifica ed esecuzione dell'Accordo di Villa Madama); l. 222/1985 (Disposizioni sugli enti e beni ecclesiastici in Italia e per il sostentamento del clero cattolico in servizio nelle diocesi);
- culti ammessi l. 1159/1929 (Legge sui culti ammessi);
- obiezione di coscienza: l. 772/1972 e l. 695/1974 (Norme per il riconoscimento dell'obiezione di coscienza);
- singole intese: l. 449/1984 (Legge di approvazione intesa lo Stato e Chiese rappresentate dalla Tavola Valdese); l. 516/1988 (Legge di approvazione intesa tra lo Stato e l'Unione delle Chiese cristiane avventiste del 7° giorno); l. 517/1988 (Legge di approvazione intesa tra lo Stato e le Assemblee di Dio in Italia); l. 101/1989 (Legge di approvazione intesa tra lo Stato e l'Unione delle Comunità ebraiche italiane); l. 409/1993 (Legge di approvazione modifiche l. 449/1984 relativa all'intesa tra lo Stato e la Tavola valdese); l. 116/1995 (Legge di approvazione intesa tra lo Stato e l'Unione Cristiana Evangelica Battista); l. 520/1995 (Legge di approvazione intesa tra lo Stato e la Chiesa Evangelica Luterana).

Relevant Constitutional Court case law:

- judgments 45/1957; 58/1960; 195/1972; 27/1975; 117/1979; 203/1989; 409/1989; 470/1989; 13/1991; 467/1991; 195/1993; 422/1993; 149/1995; 440/1995; 334/1996; 35/1997; 43/1997; 329/1997; (ord.) 221/1998; 223/2000; 271/2000; 508/2000; (ord.)34/2001; 327/2002; 168/2005.

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Freedom of expression:

Relevant legislation:

- limitazioni classiche: reati di opinione nel Codice penale (artt. 594 ss. – ingiuria e diffamazione, nelle loro diverse manifestazioni)
- modalità di espressione della libertà e Mass-media; in materia di radiotelevisione e telecomunicazioni: d.lg. 31.7.2005, n. 177 (Testo unico della radiotelevisione); l. 3.5.2004, n. 112 (Norme di principio in materia di assetto del sistema radiotelevisivo e della RAI - Radiotelevisione italiana S.p.a., nonché delega al Governo per l'emanazione del testo unico della radiotelevisione); l. 22.2.2000, n. 28 (Disposizioni per la parità di accesso ai mezzi di informazione durante le campagne elettorali e

referendarie e per la comunicazione politica); l. 31.7.1997, n. 249 (Istituzione dell'Autorità per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo); l. 6.8.1990, n. 223 (Disciplina del sistema radiotelevisivo pubblico e privato); l. 14.4.1975, n. 103 (Nuove norme in materia di diffusione radiofonica e televisiva); d.lg. 15.3.2010, n. 44 (attuazione della direttiva 2007/65/CE relativa al coordinamento di determinate disposizioni legislative, regolamentari e amministrative degli Stati membri concernenti l'esercizio delle attività televisive); l. 26.5.2011, n. 75 (Conversione in legge, con modificazioni, del decreto-legge 31 marzo 2011, n. 34, recante disposizioni urgenti in favore della cultura, in materia di incroci tra settori della stampa e della televisione); d.lg. 28.6.2012, n. 120 (Modifiche ed integrazioni al d.lg. 15 marzo 2010, n. 44, recante attuazione della direttiva 2007/65/CE relativa al coordinamento di determinate disposizioni legislative, regolamentari e amministrative degli Stati membri concernenti l'esercizio delle attività televisive);

- modalità di espressione della libertà e Mass-media; in materia di stampa e di editoria: l. 7.3.2001, n. 62 (Nuove norme sull'editoria e sui prodotti editoriali); l. 5.8.1981, n. 416 (Disciplina delle imprese editrici e provvidenze per l'editoria); l. 3.2.1963, n. 69 (Ordinamento della professione di giornalista); l. 8.2.1948, n. 47 (Disposizioni sulla stampa); in materia di cinema: l. 21.4.1962, n. 161 (Revisione dei film e dei lavori teatrali);
- la disciplina del segreto: l. 3.8.2007, n. 124 (Sistema di informazione per la sicurezza della Repubblica e nuova disciplina del segreto).

Relevant Constitutional Court case law:

- sul passaggio dal monopolio radiotelevisivo al sistema misto pubblico-privato e sul principio del pluralismo (e la garanzia del servizio pubblico radiotelevisivo): 59/1960, 11 e 98/1968, 71/1991, 224/1974, 225/1974, 202/1976, 148/1981, 231/1985, 826/1988, 348/1990, 420/1994, 466/2002.

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Legal status of people (art. 22 Cost):

Relevant legislation:

- capacità: codice civile, artt. 1, 2, 414-432;
- cittadinanza: l. 555/1912; l. 123/1983; l. 91/1992;
- disciplina dello stato civile: r.d. 1238/1939 ; artt. 6, 7, 8, 9, 10, 143-bis, 156-bis, 262, 299, 449-455 c.c.; d.p.r. 396/2000.

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Jurisdictional protection:

Relevant legislation: • Codice di procedura civile (1940); cfr. anche l. 69/2009 (Disposizioni per lo sviluppo economico, la semplificazione, la competitività nonché in materia di processo civile); l. 51/2010 (Disposizioni in materia di impedimento a comparire in udienza); d.lg. 28/2010 (Attuazione dell'articolo 60 della legge 18 giugno 2009, n. 69, in materia di mediazione finalizzata alla conciliazione delle controversie civili e commerciali); d.lg.150/2011 (disposizioni complementari al codice di procedura civile in materia di riduzione e semplificazione dei procedimenti civili di cognizione, ai sensi dell'art. 54 della legge 18 giugno 2009, n. 69); • Codice di procedura penale (1988); cfr. anche l. 124/2008 (Disposizioni in materia di sospensione del processo penale nei confronti delle alte cariche dello Stato); l. 51/2010 (disposizioni in materia di impedimento a comparire in udienza); • Codice del processo amministrativo (DLgs 104/2010); cfr. anche l. 2248/1865, all. E, art. 2; r.d. 3282/1923, artt. 1, 15, 31 e 32; r.d. 267/1942, art. 15; l. 1034/1971, art. 19, 2° co.; l. 241/1990.
Relevant Constituional Court case law: • Judgments: 234/1985, 82/1996, 492/1991, 248/1992, 107/1994, 419/1995, 175/1996, 135/1998, (ord.) 165/1998, (ord.) 210/1998, (ord.) 253/1998, 327/1998, 328/1998, 123/1999, (ord.) 231/1999, (ord.) 461/1999, (ord.) 95/2000, 198/2000, (ord.) 355/2000, (ord.) 339/2000, 394/2000, 485/2000, (ord.) 483/2000, (ord.) 79/2001, (ord.) 142/2001, 165/2001, (ord.) 183/2001, 139/2002, (ord.) 179/2002, (ord.) 186/2002, 335/2002, (ord.) 411/2002, 204/2004; 85/2008, 144/2008, 181/2008, 305/2008, 336/2208, 351/2008; 207/2009; 262/2009; 3/2010; 26/2010; 106/2010; 139/2010; 279/2010; 237/2012; 258/2012; 272/2012; 143/2013; 186/2013.

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Safeguards in extradition:

Relevant legislation: • artt. 4, 8-10 e 13 c.p.; artt. 697 ss. c.p.p.; l. 69/2005.
Relevant Constitutional Court case law: • judgments: 54/1979, 220 e 280/1985, 128/1987, 223/1996, 58/1997, 231/2004.

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Safeguards in criminal responsability:

Relevant legislation:
 	
• giudice naturale:
  o artt. 1-49, 279, 516, 517, 521 e 521-bis c.p.p.;
  o artt. 1-54, 413, 433, 444, 637, 645, 661, 669-bis, ter, quater, quinquies, terdecies, 688, 693, 703, 704, 706, 712, 736 bis, 747, 810, 828, 830, 839 e 840 c.p.c.;
• principio di legalità nel diritto penale: artt. 1, 2 e 199-215 c.p.; art. 14 disp. preliminari al c.c.

Relevant Constitutional Court case law: • principio del giudice naturale: 41/2006; 393/2002; 419/1998; 327/1998; 272/1998; 268/1987; 6/1975; 274/1974; 139/1971; 29/1958; 80/1988 • riserva di legge e il principio di legalità in materia penale: 56/1967; 88/1962; 237/2007; 452/1997; 460/1994; 168/1976; 174/1975; 71/1975; 414/1995, 36/1964; 364/1988; 131/1970; 299/1992; 26/1966 (e sull'esclusione di potestà legislativa regionale sentenza 273/1995); • norme penali in bianco: 282/1990; 132/1986; • principio di offensività: 263/2000; 360/1995; • principio di determinatezza: 34/1995; 247/1989; 96/1981; 188/1975; 20/1974; • principio di irretroattività della legge penale: 51/1985; • applicazione della legge penale più favorevole al reo: 394/2006; 393/2006; 250/2010. • principio di personalità della responsabilità penale: 3/1956; 107/1957; 79/1963; 42/1965; 364/1988; 1085/1988; 322/2007; • presunzione di non colpevolezza: 64/1970; 370/1996; 48/1994; 206/1999; • unzione rieducativa della pena: 12/1966; 67/1963; 179/1973; 167/1972; 264/1974; 50/1980; 274/1983; 255/2006; 179/2013; • principio di proporzionalità della pena: 251/2012

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