

### **1. Who is "human" in the concept of modern human rights?**

The term "human rights" in Italian constitutional law means all those rights regarding the person, protecting human life in various ways from killing, torture, slavery, assuring freedom of conscience, religion and opinions, the principle of equality against all forms of discrimination (race, sex, language, religion, political opinions, personal and social conditions) and political rights (participation in the government of the Country, institutions of direct democracy, free and periodic elections) and securing against the basic needs (health, work, wages, trade union freedom, right to housing). All these rights are aimed at ensuring a free and dignified existence.

Historically human rights have established themselves as a form of limitation of the power of the King of England and Wales, since the 1689 Bill of Rights, and then included in special Declarations that served as Preambles to the eighteenth-century revolutionary Constitutions (the *Déclaration des Droits de l'homme et du citoyen* of 1789 and the US Bill of Rights of 1791).

With the advent of the Constitutions after World War II, the Preamble technique was abandoned and the enunciation of human rights was included in the first part of the Constitutions (see, for example, the Italian Constitution of 1948, the German Constitution of 1949, the Spanish Constitution of 1978).

These rights qualify human nature from birth and preexist therefore to the individual who can neither alienate them nor be deprived of them: for this reason contemporary Constitutions recognize these rights and do not attribute them, because they are unavailable rights and the State is called to respect them and protect them.

### **2. How is carried out of the protection of a right which is not regulated in the Constitution in your legal system? What kind of balancing is done when a right uncounted in the Constitution is conflicted with a constitutional right?**

The Article 2 of the Italian Constitution states "The Republic recognizes and guarantees the inviolable rights of man, both as an individual and in social formations where his personality takes place": the Constitutional Court, by an extensively interpretation of some written rights in the Constitution, has recognized the right to privacy that does not appear in the Constitution as a right of the personality but it is derived by a judicial interpretation of the art. 15 of the Constitution: it is considered by the Italian Constitutional Court as an inviolable human right (Constitutional Court sent. N. 81/1993). This means that the elasticity of the constitutional rules allows the Court an integrative interpretation of the constitutional provisions put in place to protect human rights and fundamental freedoms in the aim of a strengthening of the protection of human persons.

### **3. Do International Human Rights Documents applied in your country represent minimum standards that are already provided or the must-reach aims? Are there any regulations in your legal system above international human rights standards? If there are, would you please explain?**

Italy has ratified the most important international documents protecting human rights: the Universal Declaration of Human Rights of 1948, the two Pacts on Civil and Political Rights and on the Economic, Social and Cultural Rights of 1966 and above all the European Convention of Human Rights of 1950, the 1951 Convention Relating to the Status of Refugees. These rules come under Italian law through the laws of execution and

are applied by the judiciary as laws of the State. It is not uncommon for the legislator to take responsibility for reinforcing the internal protection standards by expressly regulating the cases contained in international documents: this happened, for example, with the discipline of torture that was envisaged as a specific crime with art. 613-bis of the Penal Code introduced by law n. 110/2017.

**4. In your legal system, is the jurisdiction an actor itself to move forward human rights standards? If it is, would you please explain?**

Jurisprudence plays a fundamental role in the development of the protection of human rights: for example, the Court of Cassation (Englaro case, sent. 21748/2007) has recognized the right to end of life in cases of irreversible coma; the Constitutional Court (Cappato case, ord. 207/2018) obliges the legislator to statute the right to end of its life in the event of an irreversible and debilitating disease compatible with the principle of human dignity, requiring the regulation of assisted suicide to be amended.

**5. Are there values and issues in your country that are not covered by human rights documents but need to be protected under the concept of human rights? If your answer is yes, would you please explain?**

No.

**6. Are there such human right regulations in the legal system of your country that is protected by the constitution but contradicts social reality and justice?**

No.

**7. Are there any social realities contradicting international human rights concept based on individualism?**

No.

**8. In your legal system, are there legal mechanisms to protect human rights if fundamental rights are violated by private persons? Are these mechanisms effective?**

If a human right is violated by a private person and such behavior constitutes a crime, criminal justice ensures the necessary repressive protection and civil justice ensures the damages compensation. There is no direct appeal in the Italian legal system to the Constitutional Court for violation of a fundamental right.

**9. Are there groups in your country who have their own national, ethnical, religious and linguistic identities? Could you please give some information about them (especially if you feel yourself one of them)?**

Italy is a unitary regional state that recognizes linguistic minorities, such as the Ladin, Albanian or Tyrolean minorities. The protection of minorities is governed by the special statutes of some regions (Valle d'Aosta and Autonomous Provinces of Trento and Bolzano).

**10. What is the definition of the notion “minority” according to your constitutional system? What is your opinion on this concept? Do you think that minority rights should be protected broadly by the constitutional level? Do you think that constitutional regulations that would broaden the rights of minorities will solve the conflicts between majorities and minorities?**

The concept of minority, understood in its most elementary semantic aspects, expresses the idea of a relationship between a quantitatively larger entity and a quantitatively smaller entity: no matter who is on either side, since the terms of the relationship can change and invert depending on the assumptions on which the analysis is based, that is to say the historical period of reference, the form of state and the ethical-social relationships that underlie it, and so on.

The protection of the foreigner necessarily passes through the regulation of the discrimination factors of the minority situation, not being able to resolve the conflicts but being able to regulate the manifestations and identify the criteria of conduct and the differentiated evaluation parameters: in this aspect the notion of minority, although constituting a unitary typology, it breaks down into several sub-types according to the discrimination from time to time considered (religion, culture, language, race), so that the phenomenon of the minority is articulated in reality in a plurality of minority conditions.

**11. What do you think on the notion and the concept of minority rights in international law? Could the international regulations/treatments be a response to the reality and problems of the peoples in your country? In other words, do they cover the reality in your country from the view of the state and the view of peoples?**

The international protection of minorities stems from the need to offer special protection to those groups of individuals united by the communion of language, ethnicity, culture and religion that became evident following the dismemberment of the large multinational states at the end of the First World War and the decolonization after the Second World War. The protection provided by international documents goes from the right of self-determination of peoples to the right to profess one's religion, to practice one's own language.

To make these rights effective a fundamental role play the development of supranational jurisprudence, especially through the decisions of the EDU Court binding on the State to which they are addressed and for Italy intended as an interpretative instrument of the European Convention, as established by the sentences of the Italian Constitutional Court n. 348 and 349 of 2007.

**12. What you think is the most current human rights problem in your country?**

In this particular historical moment, I think that the most evident problem is the protection of the human rights of immigrants: recently the Italian Parliament voted a series of measures (conversion into law of the security decrees) with which the sanctions have been tightened for ships rescuing migrants at sea ending up in Italian ports. Landing bans have been adopted, canceled by administrative judges, creating a climate of hostility towards weak and needy individuals. All of this is in contrast with the Italian Constitution (articles 10 and 117) and with the international norms (Conventions SAR and SOLAS) that regulate sea rescue binding for the Italian State.

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