

NON-DISCRIMINATION, GENDER EQUALITY AND ROMA WOMEN

Syllabus for Italy

JUSTROM

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Council of Europe
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PREFACE

Roma women continue to be particularly affected in their access to justice, resulting from many inequalities at the legal, institutional, structural, socio-economic and cultural levels. These obstacles are especially serious for women and girls who are victims of violence. More generally, Roma and Travellers continue to face social exclusion and discrimination, which often become important barriers in exercising their fundamental rights¹.

■ The reports of the Council of Europe Commissioner for Human Rights², include information on violence against Roma, serious forms of discrimination and human rights violations. Key international and regional bodies, such as the UN Special Rapporteur on Minority Issues³ and the Council of Europe's European Commission against Racism and Intolerance (ECRI) confirm relevant findings. The latter highlighted that "*Roma continue to live in conditions of acute marginalization and discrimination*"⁴.

■ The rule of law, including access to justice, is a pillar of any democratic society, in accordance with, *inter alia*, UN Sustainable Development Goals, especially SDG No. 16 - Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Awareness about the situation of the Roma allows to learn more about how to effectively implement the principles of non-discrimination and equality, especially gender equality, at the domestic and local levels, in accordance with international and regional standards.

■ Therefore, the following Modules have the following two aims: 1) to help academia and representatives of higher education institutions better understand minority-related human rights issues, collectively and individually, from an international and regional human rights law, perspective; 2) to help relevant professionals and students better understand the variety of human rights issues that are at the core of the daily life of each and every human being in particular when accessing human rights-related services at a local level. These Modules have been designed to also be adapted to a variety of target groups, including outside formal educational institutions, thanks to, *inter alia*, the exercises and readings suggested. The ultimate goal is to allow students to "connect the dots" between international, regional and domestic human rights standards, measures and tools, and to include them in their work, with a view to better promoting and protecting the human rights of all, especially of women, including Roma women.

■ The syllabus was drafted with the invaluable support of the following winners of the European Law Students Association - ELSA Italia XVIII National Moot Court Competition: Daniela Gioia, Mietta Leone, Federica Napoletano, Valeria Ricchiuti, and Maria Vittoria Voi.

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1. Second European Union Minorities and Discrimination Survey - Main results, available at: <http://fra.europa.eu/en/publication/2017/eumidis-ii-main-results>
 2. See CoE Commissioner's letter in May 2017 (ref. CommHR/NM/sf 020-2017 to the Greek Minister of Justice and Alternate Minister of Interior on police torture of Roma in West Attica, Greece: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2968717&SecMode=1&DocId=2401540&Usage=2>; letter to the governments of Albania, Bulgaria, France, Hungary, Italy, Serbia and Sweden in February 2016 regarding forced evictions of Roma).
 3. UN Doc. A/HRC/29/24, HRC29/2015
 4. ECRI Fifth report on Italy, on housing conditions and discrimination of Roma: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Italy/ITA-CbC-V-2016-019-ENG.pdf>.

Module 1

ROMA HISTORY, NON-DISCRIMINATION AND GENDER EQUALITY: RELEVANT UN HUMAN RIGHTS MACHINERY AND STANDARDS

Introduction

■ This Module aims to provide an overview of relevant international/UN human rights standards and of the principle of non-discrimination in light of the history of the Roma across the centuries in Europe, including in Italy when the first flow of Roma, migrating from India/Central Asia, arrived in the early 15th century.

■ By focusing on the UN human rights machinery and standards, the students and other readers will learn how to read and use documents of relevance for their potential clients/beneficiaries, especially Roma women and girls, while gaining a wealth of knowledge on minority-related issues, gender equality, legal status, nationality, statelessness, and violence against women, including domestic violence. The focus on Roma history will ensure better understanding of the root causes of limited access and/or discrimination, including multiple and intersecting discrimination against women, especially Roma women.

Specific objectives

■ At the end of this Module, students will be able to use key tools such as the documentation of the Universal Periodic Review and UN Human Rights Council Resolutions, in addition to being able to go through the quasi-jurisprudence of UN Human Rights Treaty Bodies, in order to expand their knowledge of relevant case-law.

■ The study of relevant institutions, by simulations, quizzes and a case-by-case analysis, will facilitate a clear understanding of international human rights law-related developments and how to recall these standards within the national and local frameworks, including with regard to multiple and intersecting discrimination against women, especially Roma women.

Case study method

■ The case study method will facilitate a learning-by-doing approach, a “method of teaching law based on experiential learning, aimed at fostering the growth of individual knowledge and skills, while promoting social justice⁵.” Students are actively involved in solving the case by linking it to the personal history of the clients/beneficiaries. By using participatory approaches, clients are directly involved in the identification of and solution to problems. The aim is to demonstrate how law can be an “inclusive place”, where even the most vulnerable can have a voice (through a collaborative narrative process), as protagonists of their own lives and as full political and social actors, regardless of whether they are citizens or foreigners.

■ The case study method allows students to immediately confront real legal issues, starting from the concrete problem and then going back to the solution. Starting from this approach rather than from theoretical analysis, this will immediately attract the students’ attention: the issue will remain more memorable because the students will immediately have to confront their knowledge of the general principles or specific rules that they will have to apply in order to find the right solution. Students will therefore be asked to analyse the case in depth and propose possible solutions by identifying the problems related to it. They will also be given an *ex-ante* and/or *ex-post* quiz, as well as a possible exercise in the drafting of a legal text to test their knowledge

■ Knowledge of Roma history and the impact of migration flows on this minority - both in terms of collective rights and individual rights, with focus on women and children - is key to understanding the effectiveness of human rights, in the light of the principles of equality and non-discrimination, which are cross-cutting throughout international, regional and national standards.

5. ENCLE: <https://encle.org/>

A. Roma History – Roma History in Italy

Three main relevant consecutive migration flows are to be reported over the centuries. All of them have significantly impacted Roma history and subsequent relevant human rights-related developments, including from a legal status standpoint.

Currently Roma in Italy may be:

- ▶ Italian citizens;
- ▶ European Union citizens;
- ▶ Non-European Union citizens;
- ▶ Refugees or asylum-seekers;
- ▶ *De facto* or *de jure* stateless persons (see Module 3 below).

B. International Human Rights Standards⁶

UN Human Rights Treaty Bodies, mandated to monitor the implementation of ratified international human rights standards by State parties, also release General Recommendations/Comments on a variety of key current thematic issues, ranging from statelessness to harmful practices, besides issuing Views on individual Communications, as lodged under given requirements, by individuals, groups of individuals and NGOs.

1. Universal Declaration of Human Rights (acronym, UDHR) – Articles 1, 2, 15

2. International Convention on the Elimination of All Forms of Racial Discrimination (acronym, ICERD)

CERD Committee's General Recommendations

- ▶ CERD General Recommendation No. 11/1993 on Non-Citizens
- ▶ CERD General Recommendation No. 25/2000 on Gender-related Dimensions of Racial Discrimination
- ▶ CERD General Recommendation No. 27/2000 on Discrimination against Roma
- ▶ CERD General Recommendation No. 30/2005 on Discrimination against Non-Citizens

3. International Covenant on Economic, Social and Cultural Rights (acronym, ICESCR)

CESCR Committee's General Comments

- ▶ CESCR General Comment No. 9/1998 on The Domestic Application of the Covenant
- ▶ CESCR General Comment No. 16/2005 on Gender Equality in the Field of All Economic, Social and Cultural Rights
- ▶ CESCR General Comment No. 20/2009 on Non-Discrimination in Economic, Social and Cultural Rights

4. International Covenant on Civil and Political Rights (acronym, ICCPR) – Articles 2, 3, 26, 27

CCPR Committee's General Comments

- ▶ CCPR General Comment No. 15/1986 - The position of aliens under the Covenant
- ▶ CCPR General Comment No. 18/1989 - Non-Discrimination
- ▶ CCPR General Comment No. 23/1996 - Rights of Minorities
- ▶ CCPR General Comment No. 28/2000 - The equality of rights between men and women

5. International Convention on the Elimination of All Forms of Discrimination Against Women (acronym, UNCEDAW) – Articles 9, 10, 11, 12, 13, 15, 16

CEDAW Committee's General Recommendations

- ▶ CEDAW General Recommendation No. 12/1989 on Violence Against Women
- ▶ CEDAW General Recommendation No. 12/1992 on Violence Against Women
- ▶ CEDAW General Recommendation No. 21/1994 on Equality in Marriage and Family Relations
- ▶ CEDAW General Recommendation No. 24/1999 on Women and Health
- ▶ CEDAW General Recommendation No. 27/2010 on older women and protection of their human rights (*it provides a clear explanation about the concept of multiple and intersecting discrimination*)

6. In the present annotated Syllabus, UNCPED will not be dealt with.

- ▶ CEDAW General Recommendation No. 28/2010 on The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women
- ▶ Joint General Recommendation No. 31/2014 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices
- ▶ CEDAW General Recommendation No. 32/2014 on the Gender-related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women
- ▶ CEDAW General Recommendation No. 33/2015 on Women's Access to Justice
- ▶ CEDAW General Recommendation No. 35/2017 on Gender-based Violence against Women, updating General Recommendation No. 19
- ▶ CEDAW General Recommendation No. 36/2017 on the Right of Girls and Women to Education

6. UN Convention Against Torture (acronym, UNCAT)

- ▶ CAT Committee's General Comments
- ▶ CAT's General Comment No.2/2008 on the Implementation of Article 2 by States-Parties

7. UN Convention on the Rights of the Child (acronym, UNCRC)

CRC Committee's General Comments

- ▶ General Comment No. 13/2011 on The Right of the Child to Freedom from All Forms of Violence
- ▶ General Comment No. 14/2013 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration
- ▶ General Comment No. 15/2013 on The Right of the Child to the Enjoyment of the Highest Attainable Standard of Health
- ▶ General Comment No. 19/2016 on Public Budgeting for the Realization of Children's Rights
- ▶ Joint General Comment No. 3/2017 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22/2017 of the Committee on the Rights of The Child on the General Principles regarding the Human Rights of Children in the Context of International Migration
- ▶ Revision 2019 of Joint General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices and General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women
- ▶ General Comment No. 25/2021 on Children's Rights in relation to the Digital Environment

8. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (acronym, ICMW)

9. International Convention on the Rights of Persons with Disabilities (acronym, ICRPD)

CRPD Committee's General Comments

- ▶ General Comment No. 6/2018 concerning Equality and Non-Discrimination

C. UN Human Rights Machinery

■ The UN human rights machinery was profoundly changed following UNGA resolution 60/251, adopted in March 2006, by which the then UN Commission on Human Rights was replaced by the UN Human Rights Council. Within this framework the architecture of the Council, including "the eyes and ears", was significantly updated as also proven by the introduction (re-establishment, *mutatis mutandis*) of the Universal Periodic Review (acronym in English, UPR).

■ All UN Member States underwent this peer review, currently at its Third Cycle: States consideration within the framework of this exercise is relevant to the search for accurate and updated data and information on human rights with regard to the so-called Countries of Origin.

■ Among the thematic Special Procedures of the Council, in particular among the so-called eyes and ears of the Council, of relevance are: the UN Special Rapporteur on Violence against Women, its causes and consequences; and the UN Working Group on Discrimination against Women (*de jure* and *de facto*). In parallel with the developments of the Geneva-based UN human rights machinery, the New York-based organs and bodies, especially UNGA's Third Committee, UNCSW and UN Women, play an essential role to comprehensively address and advance on a variety of issues, especially with regard to women and gender equality.

UN Human Rights Council

UN Human Rights Advisory Committee

UN Special Procedures

- ▶ UN Special Rapporteur on Minority Issues, UN Special Rapporteur on the Human Rights of Migrants, UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, UN Special Rapporteur on violence against women, its causes and consequences, UN Working Group on discrimination against women and girls

UN Universal Periodic Review

- ▶ Countries of Origin and Documentation by Country

UN General Assembly's Third Committee

OHCHR

UNHCR

Of relevance for the Roma in the context of migration are also:

- ▶ Geneva Convention on Refugee Status
- ▶ International Convention on Statelessness
- ▶ International Convention on Reduction of Statelessness⁷
(please kindly refer to Module 3 below)

UNCSW

CSW Agreed Conclusions

- ▶ CSW63
Social protection systems, access to public services and sustainable infrastructure for gender equality and the empowerment of women and girls
- ▶ CSW57
Elimination and prevention of all forms of violence against women and girls
- ▶ CSW51
Elimination of all forms of discrimination and violence against the girl child
UN Doc. E/2007/27-E/CN.6/2007/9
- ▶ CSW50
A. Enhanced participation of women in development: an enabling environment for achieving gender equality and the advancement of women, taking into account, inter alia, the fields of education, health and work
B. Equal participation of women and men in decision-making processes at all levels
UN Doc. E/2006/27-E/CN.6/2006/15, Corr.1, and Corr.2
- ▶ CSW45
B. Gender and all forms of discrimination, in particular racism, racial discrimination, xenophobia and related intolerance
UN Doc. E/2001/INF/2/Add.2

UN Women

Teaching method

■ Face-to-face, online and/or hybrid, depending on the needs and the situation at a local level (duration may vary depending on availability from two hours to two days, in addition to time for exercises such as quizzes and analysis of real cases according to a clinical approach).

■ Quiz and/or negotiation of a draft Resolution on "Multiple and intersecting discrimination against women"

⁷. Please kindly refer to information under Module 3 below.

Readings

International Human Rights, P. Alston & R. Goodman, 2012

International Human Rights Law: Cases, Materials, Commentary, O. De Schutter, 2014

The Legal Protection of Women from Violence: Normative Gaps in International Law, R. Manjoo, 2019

Global study on the human rights situation of Roma worldwide

<https://www.ohchr.org/en/issues/minorities/srminorities/pages/globalstudyonromaworldwide.aspx>

The Analysis of Legal Cases: A Narrative Approach, Flora Di Donato, Routledge, 2020a.

The Global Evolution of Clinical Legal Education More than a Method, Richard Wilson, Cambridge University Press, 2017

“Fieldwork: The Experience that Sparks the Learning”, in: Susan Bryant, Elliott.S. Milstein & Ann C. Shalleck (dir.). *Transforming the Education of Lawyers: the Theory and Practice of Clinical Pedagogy*, Susan Bryant, & Conrad Johnson, Carolina Academic Press, 2014, pp. 251-279.

Il Consiglio Diritti Umani nel sistema onusiano di promozione e protezione dei diritti umani: profili giuridici ed istituzionali, Maja Bova, Giappichelli Ed., Turin, 2011.

Council of Europe Factsheets on Roma History

<https://rm.coe.int/factsheets-on-romani-history-general-introduction/16808b18e9>

Council of Europe Factsheets on Roma History and Italy

<https://www.coe.int/en/web/roma-and-travellers/roma-history-factsheets>

Italy's Roma Inclusion Strategy, 2012 - 2020

https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-equality-inclusion-and-participation-eu/eu-roma-national-integration-strategies-2020_en

UN Sustainable Development Goals

<https://sdgs.un.org/goals>

Web sources

www.coe.int

<https://www.coe.int/en/web/roma-and-travellers/roma-history-factsheets>

<https://www.coe.int/en/web/roma-and-travellers>

www.un.org

www.ohchr.org

<https://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>

<https://ccprcentre.org>

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/Home.aspx>

<https://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/AboutAC.aspx>

<https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>

<https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

www.unhcr.org

<https://www.un.org/en/ga/third/>

www.unwomen.org

<https://www.unwomen.org/en/csw>

<https://www.unwomen.org/en/csw/outcomes>

https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu_en

www.unar.it

Module 2

NON-DISCRIMINATION, GENDER EQUALITY AND ROMA WOMEN: RELEVANT COUNCIL OF EUROPE AND EUROPEAN UNION REGIONAL STANDARDS AND MECHANISMS

Introduction

■ Roma are Europe's largest ethnic minority. According to the Council of Europe, Roma account for about 10-12 million people in Europe. Over the last decades, regional organisations such as the Council of Europe, the European Union and the Organization for Security and Co-operation in Europe (OSCE)⁸ have been working thoroughly to facilitate the effective inclusion of Roma.

■ Against this background, relevant standards and mechanisms, inspired by the principles of equality and non-discrimination, aim to ensure that Roma women and girls are effective agents of change to overcome marginalisation, multiple and intersecting discrimination, and violence. To this end, the painstaking work by regional relevant human rights mechanisms and judicial authorities (European Court of Human Rights in Strasbourg and the European Court of Justice in Luxembourg) is essential.

■ The specific access of members of the Roma minority to the European Court of Human Rights and to the European Committee of Social Rights under the revised European Social Charter has allowed the affirmation of legal principles to contribute to social transformation and to the general awareness of minority rights, collectively and individually. The European Court of Human Rights has thus come to affirm the legal recognition of their specific characteristics, which is now an essential dimension of law in contemporary multicultural societies; the application of the rights set out and the legal, normative and jurisprudential elaborations concerning the Roma is also key to not resorting to misleading simplifications and stereotypes.

Specific objectives

■ The overview of regional standards and mechanisms, guided by the principles of non-discrimination and equality, will allow students, including through simulations and quizzes, to better understand the impact of these instruments at the national and local levels. They will also specifically learn about the impact and existence of available means against multiple and intersecting discrimination.

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■ In the aftermath of the Second World War and, over the last decades, the development of relevant regional standards and mechanisms, with a focus, on the one hand, on the implementation of the European Committee of Social Rights and of the European Social Charter, as well as the work of the European Court of Human Rights, including its Roma-related case-law, and, on the other hand, on European Union standards, legislation and mechanisms, especially the Nice Charter and the Lisbon Treaty, that is the Treaty on the Functioning of the European Union, has greatly contributed to advancing along the inclusion pathway.

■ Also of relevance is the *Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)* as an invaluable instrument to combat all forms of violence against women and its root causes, including multiple and intersecting discrimination⁹.

8. As for the annotated Syllabus under reference, OSCE will be mentioned in general terms, only.

9. Watching videos and analysing real cases by meeting real clients/beneficiaries will be of relevance.

A. Relevant Council of Europe Standards

1. Convention for the Protection of Human Rights and Fundamental Freedoms and Additional Protocols – Articles 2, 3, 6, 8, 14 (ECHR), and its additional Protocols ratified by Italy;
2. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, including its two Optional Protocols (CPT)
3. European Framework Convention for the Protection of National Minorities
4. Revised European Social Charter (ESC)
5. European Convention on the Exercise of the Children’s Rights
6. Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw Convention)
7. Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)
8. Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)
9. Recommendations: Recommendation CM/Rec(2020)2 of the Committee of Ministers to member States on the inclusion of the history of Roma and/or Travellers in school curricula and teaching materials; CM/Rec(2020)2 in other languages; Council of Europe Strategic Action Plan for Roma and Traveller Inclusion (2020-2025) CM(2019)161 approved by the Committee of Ministers of the Council of Europe on 22 January 2020 at the 1365th meeting of the Ministers’ Deputies; Recommendation CM/Rec(2017)10 of the Committee of Ministers to member States on improving access to justice for Roma and Travellers in Europe; Recommendation CM/Rec(2012)9 of the Committee of Ministers to member States on mediation as an effective tool for promoting respect for human rights and social inclusion of Roma; Declaration of the Committee of Ministers on the Rise of Anti-Gypsyism and Racist Violence against Roma in Europe; Recommendation CM/Rec(2009)4 of the Committee of Ministers to member states on the education of Roma and Travellers in Europe; Recommendation CM/Rec(2008)5 of the Committee of Ministers on policies for Roma and/or Travellers in Europe; Recommendation Rec(2006)10 of the Committee of Ministers on better access to health care for Roma and Travellers in Europe; Recommendation Rec(2005)4 of the Committee of Ministers on improving the housing conditions of Roma and Travellers in Europe; Recommendation Rec(2004)14 of the Committee of Ministers on the movement and encampment of Travellers in Europe; Recommendation Rec(2001)17 of the Committee of Ministers on improving the economic and employment situation of Roma/Gypsies and Travellers; Recommendation Rec(2000)4 of the Committee of Ministers on the education of Roma/Gypsy children in Europe; Recommendation Rec(83)1 of the Committee of Ministers on stateless nomads and nomads of undetermined nationality; Resolution Res(75)13 of the Committee of Ministers containing recommendations on the social situation of nomads in Europe.
10. Council of Europe Strategic Action Plan on Roma and Traveller Inclusion (2020-2025)

B. The European Court of Human Rights (ECtHR)

■ The rights to access to justice and to a fair trial are guaranteed under Article 6 of the European Convention on Human Rights and must be secured for all, without discrimination, in accordance with Article 14 of the Convention.

■ The ECtHR recognized, on a number of occasions, Roma as a vulnerable group that needs special protection (*Buckley v. UK*, No. 20348/92¹⁰). ‘Special consideration should be given to the needs of Roma and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases’: *Chapman v. the United Kingdom*¹¹: ‘Roma require special protection. (...) this protection also extends to the sphere of education’: *D.H. and Others v. Czech Republic*¹². In a case from December 2017, *Kosa v Hungary*¹³, the Court noted that: ‘[s]uch a proposition would be especially justified in relation to alleged discrimination against a vulnerable group requiring special protection, such as Roma children ... Access to justice for members of such groups should be facilitated so as to provide effective protection of rights... the Convention is intended to guarantee rights which are ‘practical and effective’ rather than theoretical and illusory ...’ (paragraph 57).

10. *Buckley v. the United Kingdom*, 25 September 1996, Reports of Judgments and Decisions 1996-IV

11. *Chapman v. the United Kingdom* [GC], No. 27238/95, ECHR 2001-I

12. *D.H. and Others v. the Czech Republic* ([GC], No. 57325/00, ECHR 2007-IV

13. *Kosa v. Hungary* (dec.), No. 53461/15, 21 November 2017

Relevant case-law

■ The ECtHR has often ruled on the prohibition of racial-ethnic discrimination under Article 14 of the ECHR in connection with other fundamental rights and freedoms protected by the Convention itself, addressing the various issues related to the condition of the Roma minority in Europe under the lens of Articles 2, 3, 6(1) and 8 ECHR.

■ The right to respect for private and family life (Article 8) was referred to by the Court in connection with:

- ▶ The right to housing with reference to the destruction of Roma properties and villages; in *Moldovan and others v. Romania*¹⁴, a judgment of 12 July 2005, the Court concluded that there had been a violation of Articles 3, 8 and 6 § 1, alone and in conjunction with Article 14 of the ECHR, noting that the applicants' ethnic origin had been decisive for the duration and outcome of the proceedings (see, in relation to Article 3 of the ECHR, also *Koky and others v. Slovakia*, judgment of 12 June 2012¹⁵); in *Tănase and others v. Romania*, judgment of 26 May 2009¹⁶, the Court removed the case from the register following the Romanian Government's declaration of recognition of the violation of Articles 3, 6, 8, 13 and 14 of the Convention, as well as Article 1 of Protocol No. 1 (protection of property), and undertaking to compensate the applicants for the loss of their property and to adopt the necessary measures to guarantee those rights;
- ▶ The "right to a traditional way of life" examined in the context of cases originating from complaints by members of the Roma community forced to leave the land on which they were stationed with their caravans (*Buckley v. United Kingdom*, judgment of 25 September 1996, and the cases *Chapman, Coster, Beard, Lee and Jane Smith, v. United Kingdom*, [GC], judgment of 18 January 2001), although the Court did not hold an alleged violation of Articles 8 and 14 of the European Convention on Human Rights by the authorities responsible for the removal order, considering the eviction measure to be compatible with the State's margin of appreciation and "necessary in a democratic society", holding that the measure did not violate the Roma's right to a traditional way of life. However, the Court observed that the vulnerable position of the Roma minority gave rise to a positive obligation for the State to give special consideration to their socio-cultural specificities as a disadvantaged group. Accordingly, in *Connors v. United Kingdom*, judgment of 27 May 2004¹⁷, and *Yordanova and others v. Bulgaria*, judgment of 24 April 2012¹⁸, it acknowledged the violation of Article 8. The Court, in applying this principle in *Connors v. United Kingdom* and *Yordanova and Others v. Bulgaria*, upheld a violation of Article 8 of the European Convention on Human Rights, considering the order to evict the applicants from their squatted houses in a Roma settlement to be a disproportionate measure, not justified by a pressing social need, and in violation of the principle of proportionality in balancing the interests at stake.
- ▶ The right to reproductive health of Roma women who were sterilised against their will (*V.C. v. Slovakia*, judgment of 8 November 2011¹⁹, *N.B. v. Slovakia*, judgment of 12 June 2012²⁰ and *I.G. and others v. Slovakia*, 13 November 2012²¹); the Court found a violation of Article 8 in connection with the prohibition of inhuman and degrading treatment under Article 3 of the ECHR.
- ▶ Racist statements contained in publications financed with public funds, namely a university textbook on Roma and two dictionaries (*Aksu v. Turkey*, judgment of 15 March 2012²²); the Grand Chamber held that there was no violation of Articles 8 and 14 of the ECHR. It was held that the applicant failed to produce *prima facie* evidence that the publications had a discriminatory intent or effect. Under Article 8, it examined whether the Government had complied with its positive obligation to protect the private life of the applicant against interferences from third parties, concluding that there was no violation of this article.

■ The right to life under Article 2 of the ECHR and the prohibition of inhuman or degrading treatment under Article 3 of the ECHR was affirmed in the leading case *Nachova and others v. Bulgaria*, judgment of 6 July 2005, in which the Grand Chamber, with a jurisprudential *revirement*, held a violation of Article 14 in conjunction with Article 2, in relation to the failure of the investigating authorities to establish racial discrimination in the events leading to the death of the two young men, but decided that the hypothesis of the racist matrix of

14. *Moldovan and Others v. Romania (No. 2)*, nos. 41138/98 and 64320/01, ECHR 2005-VII (extracts))

15. *Koky and Others v. Slovakia*, No. 13624/03, 12 June 2012

16. *Tănase and Others v. Romania*, No. 62954/00, 26 May 2009

17. *Connors v. The United Kingdom*, No. 66746/01, 27 May 2004

18. *Yordanova and Others v. Bulgaria*, No. 25446/06, 24 April 2012

19. *V.C. v. Slovakia*, No. 18968/07, ECHR 2011 (extracts)

20. *N.B. v. Slovakia*, No. 29518/10, 12 June 2012

21. *I.G. and Others v. Slovakia*, No. 15966/04, 13 November 2012

22. *Aksu v. Turkey* [GC], Nos. 4149/04 and 41029/04, 15 March 2012

the murders was not proven “beyond all reasonable doubt” (followed by *Bekos and Koutropoulos v. Greece*, judgment of 13 December 2005²³; *Cobzaru v. Romania*, 26 July 2007; *Angelova and Iliev v. Bulgaria*, judgment of 26 July 2007; *Petropoulou-Tsakiris v. Greece*, judgment of 6 December 2007; *Stoica v. Romania*, judgment of 4 March 2008).

■ The right to education of Roma children enshrined in Article 2 of Protocol No. 1 to the Convention, understood as the right to have access to educational institutions and to obtain official recognition of studies completed, according to the rules in force in each State, has been invoked in connection with the prohibition of discrimination (Article 14 of the ECHR) in a number of cases (*D. H. and others v. the Czech Republic*, judgment of 13 November 2007; *Sampanis and Others v. Greece*, judgment of 5 June 2008²⁴; *Oršuš and Others v. Croatia*, judgment of 16 March 2010²⁵), with regard to the establishment of special classes for Roma children, with simplified programmes, and ad-hoc preparatory classes located outside the school building, as a form of segregation which, according to the Court’s case-law, constitutes a form of “indirect racial discrimination”. The measures adopted by the educational institutions, even when not directly linked to the concrete situation of segregation determined to the detriment of Roma students, in fact gives rise to unequal treatment by producing an “institutional” discriminatory effect. It is therefore up to the State to prove that the inclusion of Roma children in separate classes is justified for objective reasons (possibly provided for mentally disabled persons) and is unrelated to their ethnic origin; the reversal of the burden of proof and the strict/critical assessment of the State’s margin of appreciation gives relevance to access to services in the educational sphere.

Violence against Women within ECtHR case-law

■ The European Convention on Human Rights is the European treaty on fundamental human rights which guarantees rights and freedoms throughout the territory of the Council of Europe’s member States. On the basis of the ECHR, the European Court of Human Rights has issued a significant number of judgments and decisions on gender-based violence cases, although the Convention itself does not contain a specific provision on this issue - unlike other human rights issues. In any case, this Convention contains numerous provisions that are directly relevant to gender-based violence and have been used by the Strasbourg Court to develop extensive case law on the subject matter: consider, for example, the provisions of Articles 2 (right to life); 3 (prohibition of torture); 4 (prohibition of slavery and forced labour); 6 (right to a fair trial); 8 (right to respect for private and family life); 13 (right to an effective remedy); 14 and Protocol No. 12 to the Convention (prohibition of discrimination).

■ By virtue of the combined interpretation and consequent application of the above-mentioned norms, the European Court of Human Rights has developed a wealth of protections in the field of gender-based violence, highlighting negative and positive obligations for member States in this area, whether referring to the concept of gender or to the similar and interchangeable term of violence against women, in the various forms of domestic violence, rape and sexual abuse, which then constitute the majority of cases brought before the European Court of Human Rights.

■ Gender-based violence and violence against women are concepts often used interchangeably simply because women statistically represent the vast majority of victims of violence and discrimination. However, the term gender-based violence is used more widely²⁶. The first international law definition of gender-based violence in 1992 was provided by CEDAW General Recommendation 19 (by the United Nations Committee on the Elimination of All Forms of Discrimination against Women, as established under the 1979 CEDAW Convention) as a form of discrimination that severely inhibits the ability of women to enjoy rights and freedoms, on an equal basis with men. The broad-based term “gender-based violence” results from its inclusion in the United Nations Declaration on the Elimination of All Forms of Violence against Women in 1993 (United Nations General Assembly 1993).

23. *Bekos and Koutropoulos v. Greece*, No. 15250/02, ECHR 2005-XIII (extracts)

24. *Sampanis and Others v. Greece*, No. 32526/05, 5 June 2008

25. *Oršuš and Others v. Croatia* [GC], No. 15766/03, ECHR 2010

26. Within the United Nations, the term gender-based violence is used broadly. According to the United Nations High Commissioner for Human Rights, gender-based violence is *any harmful act directed against individuals or groups of individuals on the basis of their gender*. The term is used as a generic term to distinguish common violence from violence directed against individuals or groups of individuals on the basis of their sex, gender identity or socially assigned gender roles. However, it is interesting to note that this definition is complemented by the statement that while women, men, boys and girls can all be victims of gender-based violence, the main victims are women and girls. In addition, it is also recognised that *violence against lesbian, gay, bisexual, transgender and intersex people is often also based on gender*.

■ Violence against women is understood as “any act of gender-based violence that causes, or is likely to cause, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty both in public and in private life”.

Binding standards on violence against women have been introduced in several regional legislative frameworks:

For example:

- The 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Organisation of American States (OAS) 1994), known as the Belém do Pará Convention, which defines VAW as any act or conduct, based on gender, that causes death or physical, sexual or psychological harm or suffering to women, whether in the public or private sphere;
- The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa 2003 (African Union 2003) which uses the term gender-based violence against women. Violence against women is understood as all acts perpetrated against women that cause or are likely to cause them physical, sexual, psychological and economic harm, including the threat of such acts; or engage in the imposition of arbitrary restrictions or deprivation of fundamental freedoms in private or public life in peacetime and in situations of armed conflict or war;
- The Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence (2011), known as the Istanbul Convention, which is the third binding regional instrument, but with an international vocation as it is also open for signature by countries that are not members of the Council of Europe, also uses the term gender-based violence against women. The Istanbul Convention provides a definition of the term gender-based violence against women, as violence that is directed against a woman because she is a woman or that affects women disproportionately (Article 3). In addition, the Istanbul Convention also defines the term gender as the set of socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men (Article 3).

The approach of the European Court of Human Rights

■ The European Court of Human Rights has issued a series of important judgments that set standards in the sphere of protection against gender-based violence, examining a wide range of case studies that covered various and widespread situations that can be roughly categorised as follows:

- ▶ domestic violence
- ▶ rape and sexual abuse
- ▶ female genital mutilation
- ▶ crime of honour and ill-treatment in the family
- ▶ social exclusion
- ▶ police and public authority violence
- ▶ ill-treatment in custody
- ▶ trafficking in human beings
- ▶ violence by private individuals

■ The Council of Europe’s member States are bound by positive and negative obligations under Article 1 of the Convention. Negative obligations translate into the almost obvious consideration that States must avoid violating conventional rights. Positive obligations, on the other hand, consist of active conducts aimed at ensuring the protection of the rights guaranteed by the Convention. The main positive obligations required in the area of protection of rights in relation to combating gender-based violence are translated into different levels of approach; firstly, States must have an adequate legal and judicial system, with effective repressive provisions, allowing effective investigations, with consequent punishment of those responsible; furthermore, States must be able to provide swift activities following complaints, by means of appropriate instruments of prevention and protection of victims; prevent and combat all forms of discrimination.

■ One of the precedents for the concept of positive obligation comes from the decision in *Airey v. Ireland* (1979). The applicant sought to separate from her husband, who threatened her with physical violence. Due to a lack of financial resources and in the absence of legal assistance provided by the State, she was unable

to hire a lawyer to represent her before the Court. The ECtHR held that the fact that she was unable to obtain a judicial separation from her husband - due to the lack of adequate financial means - constituted a violation of her right to respect for her private and family life under Article 8 of the ECHR. Thus, through Article 8, it was recognised that this Article, in addition to its primarily negative commitment, also imposes a positive obligation, inherent to the effective respect for private or family life. In the following case, *Osman v. United Kingdom* (1998)²⁷, the Court rejected the finding of a violation of Article 2, specifying that it must be established (...) that the authorities knew or ought to have known at the time, of the existence of a real and immediate risk to the life of one or more persons identified by criminal acts of a third party and that they did not take measures within the scope of their powers which, they reasonably believed, could have prevented that risk. This concept will be systematically reproduced in many judgments to mitigate positive obligations. In many subsequent cases, the Court continued to use the so-called *Osman test* and applied it in cases of domestic violence (as is the case with *Kontrová v. Slovakia*, 2007).

■ The positive obligation to have an efficient legal framework and investigation is reflected in several subsequent rulings: The case of *Valiulienė v. Lithuania* (2013)²⁸ concerns a series of violent incidents perpetrated against the applicant by her cohabitant. The ECtHR found a violation of Article 3 of the Convention as follows: further to the episodes of violence of which she had been a victim, the applicant complained of slowness and negligence in carrying out the investigation, to the extent that the facts were first evaluated by the national authorities in a reductive manner and then filed. The ECtHR found a violation of State's positive obligations of a procedural nature because, due to the negligence of the prosecutor and the police, the perpetrator of the violence had not been punished, despite the existence of incriminating provisions in the national legal system. In this case, a dissenting opinion of Judge de Albuquerque should also be noted, in which it was held that the positive obligation on the State arises at an earlier stage, since it is excessive, in the case of complaints for such cases of violence, to require an immediacy of risk, as in *Osman v. United Kingdom*, which should instead be considered implicit. Therefore, a higher standard of care should be required in these areas, thus anticipating the risk threshold and the positive obligation of States to act.

■ A violation of positive obligations to protect Articles 3 and 8 of the Convention came to light in the case of *M.C. v. Bulgaria* (2003)²⁹. The applicant, who was abused by two men between the age of 20-21, lodged a complaint with the authorities, which resulted in an unsuccessful investigation. Before the ECtHR, the applicant complained that the Bulgarian legal framework and practice were not in line with international standards as they required proof of physical resistance to rape. The Court emphasised that a State's positive obligations under Articles 3 and 8 require the criminalisation and effective repression of any non-consensual sexual act, without regard to physical resistance on the part of the victim. In this regard, the ECtHR pointed out that investigators and prosecutors had placed too much value on the lack of "direct" evidence of rape, making the victim's physical resistance an element of the crime of sexual abuse, conditioning the protection of the victim and the punishment of perpetrators. This resulted in a violation of Articles 3 and 8 of the Convention.

■ **In terms of the obligation to provide adequate preventive measures, several rulings come to light.** In *Kontrová v. Slovakia* (2007)³⁰, the Court ruled on domestic violence, framing the specific relevance of Article 2 of the Convention. The applicant complained of continuous and severe ill-treatment by her husband. She was dissuaded by police officers (according to a bad habit of often acting as mediators, influenced by prejudice and socio-cultural contexts) and withdrew the complaint, but then her husband, following-up to previously expressed threats, killed their two children and took his own life. The European Court of Human Rights found that there had been a violation of Article 2 of the Convention because the authorities, despite being aware of a real and concrete risk to the safety of the applicant and her children, had refrained from taking adequate preventive measures, which could have prevented the tragic events that followed. The obligation to take adequate protective (and preventive) measures also emerges in *Bevacqua and S. v. Bulgaria* (cited above). In that case, the applicant had received no attention in respect of her application for protective measures to obtain custody of her son. In the Court's view, this had resulted in a violation of Article 8 of the ECHR, with regard to the insufficiency of the applicant's protection measures, also noting that the Bulgarian legal framework on this point was insufficient, since there were no provisions on specific administrative measures, nor could the position of the Bulgarian authorities that wrongly relegated the matter to a private dispute in which the public interest was not involved, be considered relevant.

27. *Osman v. the United Kingdom* (28 October 1998, Reports of Judgments and Decisions 1998-VIII)

28. *Valiulienė v. Lithuania*, No. 33234/07, 26 March 2013

29. *M.C. v. Bulgaria*, No. 39272/98, CHR 2003-XII

30. *Kontrová v. Slovakia* (dec.), No. 7510/04, 13 June 2006

The obligation of non-discrimination

■ The Court has frequently recorded that lack of access to justice in the area of gender-based violence is also the result of socio-cultural prejudices that lead to discrimination, often tolerated by national authorities. The discriminatory aspect of violence against women was addressed by the Court in the case of *Opuz v. Turkey* (2009), a landmark case because for the first time in the area of domestic violence, the Court held that there had been a violation of Article 14 of the Convention (prohibition of discrimination), in conjunction with Article 2 and Article 3). The Court recognised that domestic violence mainly affected women, while the general discriminatory judicial passivity in Turkey created a climate conducive to gender discrimination. Despite the reforms implemented by the Turkish government in recent years, the general lack of response of the judiciary and the impunity enjoyed by the perpetrators, as found in this specific case, highlighted an insufficient commitment by the authorities to take appropriate action to address domestic violence. Specifically, the applicant's mother was shot dead by the applicant's husband while trying to help the applicant escape from the matrimonial home due to repeated violence committed by her husband. Criminal proceedings against the husband were dropped or dismissed and the man was given very light sentences. Later, the man killed the applicant's mother and was sentenced to life imprisonment, but, pending appeal, he was released and repeatedly threatened the applicant, who unsuccessfully sought protection from the authorities.

■ In the judgments *Bevacqua and S. v. Bulgaria*³¹ and *Opuz v. Turkey*³², the Court recognises and promotes an enhanced standard of due diligence in the context of domestic violence, i.e. minimum standards outlining the existence of positive obligations of the State to take action in adherence to the principles of protection, investigation and prosecution of acts of gender-based violence. These minimum standards include the adequacy of the judicial mechanism to ensure that adequate measures of protection are obtained. The Court went a step further in the case of *Opuz v. Turkey* and recognised that the failure of national authorities to exercise due diligence, including in the provision and enforcement of adequate protection and prevention measures, constituted gender-based discrimination.

■ Further evidence of a breach of the obligation of non-discrimination can be found in *Talpis v. Italy* (2017)³³ concerning the marital violence suffered by the applicant, which resulted in the murder of her son and her own attempted murder. According to the Court, the risk of a real and immediate threat (...) must be assessed with due regard to the particular context of domestic violence. Moreover, in such a situation it is not only a question of society's general duty of protection (...) but, above all, of taking into account the repetition of successive episodes of violence within the family unit. In this case, therefore, in addition to a violation of Articles 2 and 3 of the Convention, the Court found a violation of Article 14 of the European Convention on Human Rights in conjunction with those articles. The violence inflicted on the applicant was based on gender and constituted a form of discrimination against women. The authorities, by their inaction, underestimated the seriousness of the violence and essentially endorsed it. Similar principles were expressed in *O'Keeffe v. Ireland* (2014)³⁴, concerning the liability of national authorities for the sexual abuse of a nine-year-old student by a teacher in a national school. The Court, stressing the importance of the context in which the violation occurred by noting the fundamental nature of the rights guaranteed by Article 3 and the particularly vulnerable nature of children, underlined that it was an inherent obligation of the government to ensure their protection from ill-treatment by adopting, where necessary, special measures and safeguards. Moreover, in the case of *Talpis v. Italy* - as in others -, the action of the Committee of Ministers in enforcing the Strasbourg judgment led to the adoption of important individual and general measures by the states against which violations of the Convention have been found. The enforcement phase, under Article 46 of the Convention, is of prime importance. The measures that a state is called upon to adopt during the enforcement phase are not aimed solely at putting an end to the violation established and providing compensation or reparation to the victim in the specific case, but extend to the general measures that the state is called upon to adopt, in accordance with the judgment, in order to prevent new similar violations. For example, this is what happened for Italy following the aforementioned *Talpis* case, with the adoption of measures, including legislative ones, culminating in the introduction of Law No. 69 of 19 July 2019.

31. *Bevacqua and S. v. Bulgaria*, No. 71127/01, 12 June 2008

32. *Opuz v. Turkey*, No. 33401/02, ECHR 2009

33. *Talpis v. Italy*, No. 41237/14, 2 March 2017

34. *O'Keeffe v. Ireland*, No. 35810/09, 28 January 2014

■ In the ECtHR framework too, however, there have been fluctuations in case-law over the years. Indeed, in the case of *Kurt v. Austria*³⁵ concerning the murder of the applicant's son by his father after previous allegations of domestic violence, the Court again based its decision on the dictates expressed in *Osman v. the United Kingdom*. Almost at the same time, however, in *Volodina v. Russia* (2019) concerning the applicant's complaint that the national authorities had failed to protect her from repeated domestic violence, the Court took a more expansive approach to national obligations in the area of domestic violence, echoing the approach of *Talpis v. Italy* and - even earlier - the enhanced protection that disregards the establishment of the immediacy of the risk, already referred to with reference to the dissenting opinion in *Valiulienė v. Lithuania*. The Court's guidelines on sexual abuse propose the same reconstruction of States' positive obligations, as in the case of domestic violence and gender violence in general³⁶.

■ To conclude this brief and representative review, on the subject of sexual abuse, it is worth recalling the recent judgment *J.L. v. Italy* (2021)³⁷, in which a violation of Article 8 of the Convention was held. The case concerned criminal proceedings against seven men who had been accused of gang rape by the applicant and subsequently acquitted by the Italian courts. Before the European Court, the applicant complained that the Italian authorities had failed to protect her right to respect for her private life and physical integrity in the context of the criminal proceedings conducted following her complaint. The peculiarity of the present ruling is based on the fact that the national legal framework, the efficiency of the investigations, the adoption of protective measures or the management of the trial were not censured as potentially re-victimising. The censure was directed at the expressions used by the national courts in the judgment. In the context of establishing the victim's credibility, the national appeal judgment not only used technical arguments, but also went into critical considerations of the victim's sexual life choices, expressing prejudices and retrospective thoughts that resulted in damage to the victim's private life as protected by Article 8 of the ECHR. The Court emphasised that judicial authorities should avoid reproducing sexist stereotypes in their judicial decisions, minimising gender-based violence and exposing women to secondary victimisation by making moralising comments that induce guilt and are likely to damage victims' confidence in the justice system or prevent access to it.

ECtHR case-law

■ Main European Court of Human Rights' verdicts

Aiery v Ireland, 9 October 1979

X and Y v. the Netherlands, 26 March 1985

S.W. v. the United Kingdom, 22 November 1995

C.R. v. the United Kingdom, 22 November 1995

Aydın v. Turkey, 25 September 1997

Osman v. the United Kingdom, 28 October 1998

M.C. v. Bulgaria, 4 December 2003

Kontrová v. Slovachia, 31 May 2007

Bevacqua and S. v. Bulgaria, 12 June 2008

Branko Tomašić and Others v. Croatia, 15 January 2009

Opuz v. Turkey, 9 June 2009

Valiulienė v. Lithuania, 26 March 2013

O'Keeffe v. Ireland, 28 January 2014

M.G.C. v. Romania, 15 March 2016

35. *Kurt v. Austria* [GC], No. 62903/15, 15 June 2021

36. An early case of rape before the ECtHR was *X and Y v. Netherlands* (1985). The case concerned the State's responsibility for the rape of a mentally disabled girl the day after her 16th birthday (which was the age of consent for sexual relations in the Netherlands). In the home for children with mental disabilities where she lived: The Court found a violation of positive obligations under Article 8 of the Convention in this case. The cases of *C.R. v. United Kingdom* (1995) and *S.W. v. United Kingdom* (1995) put an end to an allegedly misunderstood exemption of liability for marital rape. Another important case is found in *Aydın v. Turkey* (1997). In this case, the Court for the first time considered rape as a form of torture under Article 3 of the Convention. The case concerned a complaint by a young Turkish woman of Kurdish origin, who was arrested without explanation and taken into custody, along with two other members of her family. She was blindfolded, beaten, stripped naked, sprayed with cold water from high-pressure jets while being spun on a tyre before being raped by a member of the security forces, and then beaten again for about an hour by several people. The Court held that both the sum of the acts of physical and mental violence inflicted on the applicant during her detention and the act of rape to which she had been subjected had constituted torture, in violation of Article 3 of the Convention.

37. *J.L. v. Italy*, No. 5671/16, 27 May 2021

I.C. v. Romania, 24 May 2016
Talpis v. Italy, 2 March 2017
E.B. v. Romania, 19 March 2019
Kurt v. Austria, 4 July 2019
Volodina v. Russia, 9 July 2019
J.L. v. Italy, 27 May 2021

C. Other Relevant Council of Europe's Mechanisms

Council of Europe Human Rights Commissioner

- ▶ Recent Migration of Roma in Europe

European Commission Against Racism and Intolerance (ECRI)

- ▶ ECRI General Policy Recommendation No.13 on combating anti-Gypsyism and discrimination against Roma
- ▶ ECRI General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies

European Committee of Social Rights (ECSR)

- ▶ **Rights guaranteed by the Revised European Social Charter:**
The rights guaranteed by the Charter concern all individuals in their daily lives, with special attention for vulnerable persons and groups.
- ▶ **Housing** Legal framework providing for housing of an adequate standard (safe, healthy and of adequate size); Legal and procedural safeguards in case of eviction; Policy and action to prevent homelessness; Provision of adequate emergency accommodation for all homeless persons; Provision of affordable housing through social housing of adequate quality and quantity or other means.
- ▶ **Health** Ensuring a healthy environment; Promotion of public health through health education and screening; Prevention of diseases and accidents; Provision of and effective access to adequate and affordable healthcare; Emergency medical assistance to everyone in need, including those irregularly present; Protection of maternity, access to maternal health services, regulation of working conditions of women in relation to maternity, maternity leave.
- ▶ **Education** Free primary and secondary education for all children; Free and effective vocational guidance services; Vocational training (including continuing training), apprenticeship and access to higher education based solely on individual aptitude; Access of persons with disabilities to mainstream education and training as well as rehabilitation; Language education for migrants.
- ▶ **Employment** Access to employment - Full employment policy and action promoting equal and effective access to employment; Free employment services for jobseekers and reinsertion measures for long-term unemployed people; Access of persons with disabilities to rehabilitation and mainstream employment; Removal of obstacles to the engagement of workers in gainful occupation in other States Parties.
- ▶ Equal opportunities and equal treatment [for/of] women.
- ▶ **Social protection** from poverty and social exclusion; Adequate social security, including equal treatment of persons moving between the States Parties; Adequate social and medical assistance for all persons in need; Prevention, abolition or alleviation of need; Effective social services of adequate quality, including counselling, advice, home help, residential care, etc.; Measures in favour of families (e.g. family counselling, mediation services, protection from domestic violence, family benefits), equality of spouses, protection of parental rights, provision of childcare facilities and services; Protection of minors against physical and moral dangers such as sexual exploitation, trafficking, misuse of information technologies, and ill-treatment and abuse, including corporal punishment.
- ▶ **Integration and participation** Enabling elderly persons to remain active members of society through adequate resources and services, as well as to choose their lifestyle through the provision of housing and health care; for those living in institutions, respect of privacy, protection from abuse and participation in decisions concerning living conditions; Participation of persons with disabilities in the life of the community through non-discrimination guarantees, policies drafted in consultation with those directly concerned, technical and financial aid to increase autonomy, inclusive measures related to communication, mobility and transport, housing, culture and leisure; Guarantees concerning the journey of migrant workers; Family reunion for migrant workers and safeguards against deportation; Equal treatment of migrant workers regarding remuneration and other employment conditions, membership of trade unions and enjoyment of the benefits of collective bargaining, regarding accommodation, as well as taxes and contributions and access to justice.

- ▶ **Non-discrimination** *The rights of the Charter must be guaranteed to everybody concerned, including foreigners lawfully resident and/or working, without discrimination on any ground such as race, colour, sex, age, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status, including disability*³⁸.

GREVIO – Group of Experts

■ Like the CEDAW Convention, **Article 66** of the **Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence – Istanbul Convention** envisages a **Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)**, tasked with monitoring the advancement or setbacks in the implementation of the Istanbul Convention (10-15 members).

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence – Istanbul Convention

■ As previously mentioned, the Istanbul Convention is the most comprehensive and modern international treaty for combatting violence against women. It breaks new ground by requiring States to criminalise various forms of violence against women, including physical, sexual and psychological violence, stalking, sexual harassment, female genital mutilation, forced marriage, forced abortion and forced sterilisation.

■ The principles and standards developed in the jurisprudence of the European Court of Human Rights regarding cases of violence against women, previously only indirectly enforceable through the interpretation of Articles 2, 3, 4, 6, 8, 13, 14 of the European Convention on Human Rights, are now incorporated in the Istanbul Convention and have thus become directly legally binding. In this sense, the Istanbul Convention incorporates the standard of due diligence and defines it as the obligation of States to prevent, investigate, punish and provide redress for acts of violence perpetrated by non-State actors (Art. 5). The Istanbul Convention thus constitutes further support for the European Court of Human Rights in interpreting and applying the principles on violence against women and gender-based violence, according to recognised meanings, in addition to and in support of the European Convention on Human Rights itself.

■ The decisions of the ECtHR in some cases concerning violence against women seem to show that the provisions of the Istanbul Convention may constitute relevant rules of international law within the meaning of Article 31(3)(c) of the Vienna Convention on the Law of Treaties (...) in the interpretation of the applicable articles of the European Convention on Human Rights. For example, the Court's judgment in *Talpis v. Italy* clarifies that the provisions of the Istanbul Convention are used as relevant international law norms in the interpretation of the ECHR, in order to identify the obligations of national authorities to prevent domestic violence. In this sense, examining the alleged violation of Article 3, the Court emphasises that special diligence is required in dealing with cases of domestic violence and recognises that the specific nature of domestic violence as recognised in the Preamble of the Istanbul Convention (...) must be taken into account in domestic proceedings. Furthermore, the Court emphasised that the Istanbul Convention imposes an obligation on States Parties to adopt such legislative or other measures as may be necessary to ensure that investigations and prosecutions in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay, taking into account the rights of the victim at all stages of the criminal proceedings.

In brief, from a substantial law standpoint, with the 4Ps approach (Prevention, Protection, Prosecution and Integrated Policies), the Istanbul Convention focuses on: **relevant training for professionals; regular awareness-raising campaigns and data collection (Article 11); measures such as toll-free helplines, shelters, referral centres; criminalisation of a wide range of forms of violence against women and domestic violence, including early and forced marriage (Article 37), female genital mutilation (Article 38), forced abortion, forced sterilisation (Article 39).**

Moreover,

- i. "Violence against women" is a "violation of human rights and a form of discrimination against women" (Article 3), to be considered in the broader context of the need to ensure gender equality.
- ii. Migrant women, seeking asylum or without documents, are **particularly vulnerable** to gender-based violence. The Convention prohibits discrimination on the grounds of migrant or refugee status when it comes to the implementation of its provisions.
- iii. Focus also on honour crimes and witnessed violence.

³⁸<https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>

D. The Relevant European Union Standards and Mechanisms

■ In the European Union, in fact, the principle of equality, originally not provided for in the Treaties, was developed as a general principle of the Union by a series of judgments of the European Court of Justice; on the basis of the Court of Justice's case-law, the EU intervened with the Directives mentioned below, which were considered fundamental, as transposed and applied into national law.

- ▶ **Articles 20-23 of the Nice Charter (EU Charter of Fundamental Rights)** which recognises equality before the law, respect for cultural, religious and linguistic diversity, the principle of non-discrimination, the principle of equality between men and women, and the need to take positive action.
- ▶ **Article 6 of the Lisbon Treaty**, which entered into force on 1 December 2009, recognises the rights, freedoms and principles enshrined in the Charter of Fundamental Rights, which is given the same legal value as the Treaties, thus making it legally binding within the Union's legal system; in particular, the third paragraph of Article 3 states that "*the Union shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child*".
- ▶ **The Reform Treaty**, signed in Lisbon on 13 December 2007, consists of the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).
- ▶ **Directive 2000/43/EC of 29.6.2000 on equal treatment between persons irrespective of racial or ethnic origin.**
- ▶ **Directive 2000/78/EC on discrimination in the workplace.**
- ▶ **Council of the European Union's Recommendation/s, on Roma Equality, Inclusion and Participation (2021)**

This Recommendation reflects the needs of specific groups and the diversity of the Roma population. It replaces the December 2013 Council Recommendation on effective Roma integration measures and has an expanded scope, including measures to: fight online and offline discrimination (including harassment, antigypsyism, stereotyping, anti-Roma rhetoric and hate speech); combat multiple and structural discrimination against Roma, in particular women, children, LGBTI persons and persons with disabilities; promote multi-cultural awareness- raising activities and campaigns in schools.

- ▶ **European Commission – DG Justice**
EC Communication No. 173/2011
- ▶ **EU Agency for Fundamental Rights (FRA)' Handbook on European non-discrimination law – 2018 edition**
- ▶ **The Court of Justice of the European Union**

This Court has ruled on the interpretation of Directive 2000/43 in the Feryn judgment C- 54/07, 10 July 2008; the Kamberaj judgment C -571/10, 24 April 2012; and most recently, as far as is relevant here, with in *Chez* (Judgment of the Court (Grand Chamber) of 16 July 2015, Case C83/14 *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia*), in which discrimination on ethnic and racial grounds against Roma minority is addressed for the first time.

Teaching method

■ Face-to-face, online and/or hybrid, depending on the needs and the situation at a local level (duration may vary depending on the availability from two hours to two days, in addition to time required for quizzes and the analysis of real cases according to a clinical approach).

■ *Quiz/National Moot Court Competition and/or negotiation of a Recommendation on multiple and intersecting discrimination against women*

Readings

Roma equality, inclusion and participation in the EU. The new strategic framework for the equality, inclusion and participation of Roma in EU countries and preparation of the post-2020 initiative

https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-equality-inclusion-and-participation-eu_en#reports

Strategic Action Plan of the Council of Europe for Roma and Travellers Inclusion, 2020 – 2025

<https://www.coe.int/en/web/roma-and-travellers/-/committee-of-ministers-adopts-new-action-plan-for-roma-and-traveller-inclusion>

L. Tria, "Il divieto di discriminazione tra Corte di Strasburgo e Corti interne", 2014, in tema di evoluzione della tutela antidiscriminatoria in ambito UE

Relazione sull'attuazione delle strategie nazionali d'integrazione dei rom: combattere gli atteggiamenti negativi nei confronti delle persone di origine romani in Europa (2020/2011(INI)) https://www.europarl.europa.eu/doceo/document/A-9-2020-0147_IT.html

Manuale di diritto europeo della non discriminazione, a cura dell'Agenzia per i diritti fondamentali dell'Unione Europea: https://fra.europa.eu/sites/default/files/fra_uploads/1510-FRA-CASE-LAW-HANDBOOK_IT.pdf

D. Strazzari, C'è un giudice a Strasburgo ! La Corte Europea dei diritti dell'uomo e la tutela contro la discriminazione degli appartenenti all'etnia rom - 2011;

S. Baldin, Le minoranze rom fra esclusione sociale e debole riconoscimento giuridico. Uno studio di diritto pubblico europeo e comparato - 2012

Unione Africana, Protocollo alla Carta Africana dei Diritti Umani e dei Diritti delle Persone sui Diritti delle Donne in Africa, 11 luglio 2003.

Organizzazione degli Stati americani (OAS), Convenzione interamericana sulla prevenzione, punizione ed eliminazione della violenza contro le donne (Convenzione di Belém do Pará), 9 giugno 1994.

Assemblea Generale delle Nazioni Unite, Convenzione sull'eliminazione di ogni forma di discriminazione della donna (CEDAW) 18 dicembre 1979, United Nations, Treaty Series, vol. 1249, p. 13.

Comitato delle Nazioni Unite per l'eliminazione della discriminazione contro le donne (CEDAW), Raccomandazione generale CEDAW n. 19: Violenza contro le donne, 1992.

Assemblea generale delle Nazioni Unite, Dichiarazione sull'eliminazione della violenza contro le donne, 20 dicembre 1993, A/RES/48/104.

Consiglio d'Europa, Convenzione per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali emendata dai Protocolli n. 11 e 14, 4 novembre 1950, European Treaty Series – n. 5.

Consiglio d'Europa, Convenzione sulla prevenzione e la lotta alla violenza contro le donne e la violenza domestica, 11 maggio 2011, Council of Europe Treaty Series – N. 210.

Consiglio d'Europa, Rapporto esplicativo alla Convenzione del Consiglio d'Europa sulla prevenzione e la lotta alla violenza contro le donne e la violenza domestica, 11 maggio 2011, Council of Europe Treaty Series – No. 210.

Web sources

www.coe.int

https://www.coe.int/t/democracy/migration/bodies/echr_en.asp

https://www.echr.coe.int/documents/fs_roma_eng.pdf

<https://hudoc.echr.coe.int/eng#%7B%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D%7D>

<https://www.coe.int/en/web/european-commission-against-racism-and-intolerance>

<https://www.coe.int/it/web/commissioner>

<https://rm.coe.int/16806da62f>

<https://www.coe.int/it/web/commissioner/-/exchange-of-views-with-the-european-committee-of-social-rights?inheritRedirect=true&redirect=%2Fit%2Fweb%2Fcommissioner%2Fthematic-work%2Froma-and-travellers>

<https://www.coe.int/en/web/istanbul-convention/greivio>

<https://www.consilium.europa.eu/en/press/press-releases/2021/03/12/council-reaffirms-commitment-to-combat-discrimination-against-roma/>

https://en.wikipedia.org/wiki/Directorate-General_for_Justice_and_Consumers

<https://fra.europa.eu/en/about-fra>

https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_fr

<https://fra.europa.eu/it/publication/2020/manuale-di-diritto-europeo-della-non-discriminazione-edizione-2018>

Module 3

NON-DISCRIMINATION, EQUALITY, AND ACCESS TO HUMAN RIGHTS

Introduction

■ In this Module, we will study Italian cases that professionals (relevant operators, lawyers, volunteers) who help Roma people in vulnerable situations often face regarding citizenship, statelessness, and access in particular to social, economic and cultural rights, domestically.

■ It is important to emphasise that these cases, although built around Roma protagonists, could also concern non-Roma people. At the end of the Module – to be developed in accordance with the above clinical approach - students will have had the opportunity to address the issues of access to citizenship, legal status determination, and access to services from the perspective of the most vulnerable members of society and thus form an idea of how the law is applied in practice, and what arguments can be used (and have been used in practice in our legal system, in accordance with relevant international and regional human rights standards), to advance the law in accordance with a non-discriminatory and equality inspired approach.

Specific objectives

■ The study of issues using the case study method allows students to confront legal questions immediately, starting with the problem and working their way up to the solution: The case, as opposed to the general presentation of a concept, has the advantage of capturing the interest of the reader, who will wonder whether the reader can answer the case.

■ The question will be more memorable because the student will immediately be confronted with his or her own knowledge of the general principles or specific rules, he or she will have to apply to find the solution. The students will be asked to analyse the case in depth and propose possible solutions to the problems posed. They will also be given an *ex-ante* and/or *ex-post* quiz, as well as a possible exercise in drafting a normative text.

Table of contents

■ This Module will provide an overview of relevant national standards and the effective implementation of the principle of non-discrimination, with a focus on statelessness, regularisation and access to human rights-related services (school, health, labour, housing), as well as on the fight against all forms of violence against women and girls, including forced marriage.

A. Equality and Non-Discrimination in Italy

Relevant normative texts

- ▶ **Art. 14, European Convention on Human Rights**, which provides for the prohibition of discrimination in respect of the rights and freedoms set out in the ECHR, and **Art. 1 of Protocol No. 12**, which provides for the general prohibition of discrimination;
- ▶ **Article 21, the (Nice) Charter of Fundamental Rights of the European Union**, which provides for the prohibition of any discrimination based on any grounds, such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation;
- ▶ **Constitution - Art. 3**: Source of protection against discrimination, and of the principles of equal social dignity and formal and substantial equality;

- ▶ **Law No. 654 of 13 October 1975 - foundation of criminal protection against discrimination - ratifying and implementing the 1965 (ICERD) New York Convention of the United Nations on the Elimination of All Forms of Racial Discrimination**, which defines discrimination as *“any distinction, exclusion, restriction or preference based on race, colour, ancestry or ethnic origin, which has the purpose or effect of destroying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social and cultural fields or in any other area of public life”*;
- ▶ **Art.43, Legislative Decree No. 286/1998 (Consolidation Act on Immigration)** - though referring exclusively to the legislation to which this provision refers: *“For the purposes of this Chapter, discrimination shall be deemed to be any conduct which, directly or indirectly, results in a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, religious beliefs and practices, and which has the purpose or effect of destroying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social and cultural fields and in any other area of public life”*;
- ▶ **Art.2, paragraph 2, lett. a) Legislative Decree, dated 9 July 2003, No.215 in implementation of EU Directive 2000/43/EC**, which, on the subject of equality, states that *“direct discrimination exists when, on the grounds of racial or ethnic origin, a person is treated less favourably than another is, has been or would be treated in a comparable situation”*; similarly, ECtHR jurisprudence requires a *“difference in treatment of persons in comparable or significantly similar situations, based on an identifiable characteristic”*; **Art.2 and Article 2(2)(b) of the same Legislative Decree** provides that *“indirect discrimination exists when an apparently neutral provision, criterion or practice is liable to place persons of a particular racial or ethnic origin at a particular disadvantage compared with other persons”*; a concept endorsed by the European Court of Human Rights, according to which, *“a difference in treatment may consist in the disproportionately prejudicial effect of a general policy or measure which, although formulated in neutral terms, produces discrimination against a particular group”*;
- ▶ **Legislative Decree No. 216 of 9 July 2003 implementing Directive 2000/78/EC** extends protection - originally reserved for ethnic-racial or religious discrimination - in the world of work, as a general anti-discriminatory remedy against any forms of discrimination on the grounds of personal convictions, disability, age and sexual orientation;
- ▶ **Law No. 67 of 1 March 2006** regulates the judicial protection of persons with disabilities who are victims of discrimination;
- ▶ **Legislative Decree No. 198 of 11 April 2006** establishes specific protection of equality between men and women.

Protection against discrimination and case-law

■ In the domestic legal system, the prohibition of discrimination was initially entrusted to criminal protection (Law No. 654/1975), which transposed the criminalisation obligation provided for by the ICERD New York Convention; civil protection against discrimination was instead introduced by the Consolidated Act on Immigration (Legislative Decree No. 286/1998), which, in its Art. 43, prohibits any discriminations (definition above) and provides for the civil complaint before the ordinary judicial authority (Tribunal)³⁹. This is carried out with the summary procedure of cognition as unified by Art. 28 of Legislative Decree No. 150 of 1 September 2011, governed by incisive rules, namely:

- ▶ Jurisdiction of the ordinary judge, both in the precautionary phase and in the merits phase, since the right not to be discriminated against is an absolute subjective right (see Cass., Joint Sessions (*Sezioni Unite*), 15 February 2011, No. 3670; Cass., Joint Sessions, 30 March 2011, No. 7186 et seq.);

39. Mention has to be made of the order of the Court of Cassation, Section I Civil, 15 February 2021 No. 3842, which sets out the principle of law - giving continuity to what has already been affirmed with the previous pronouncements of the Court - according to which the discriminatory behaviours carried out by a public body towards private persons fall within the jurisdiction of the ordinary judge, since the right not to be discriminated against is configured, in consideration of the constitutional (Art.3 Cost.), supranational (Directive 2000/43/CE) and domestic framework (Articles 3 and 4 of Legislative Decree No. 215 of 9 July 2003 and Article 44 of Legislative Decree No. 286 of 25 July 1998), as an absolute subjective right, regardless of whether the alleged discriminatory conduct consists of the issuing of an administrative act. In this case, the Court dismissed the complaint by a municipality against the measure that had declared discriminatory the resolution of the same authority, by which it had been imposed a ban on camping in that given municipality, immediately after some Roma had applied for the allocation of an area equipped for parking in the municipality concerned. The ordinary judge must, in fact, focus on “deciding the controversy by evaluating the administrative measure complained of, disregarding it “tamquam non esset” and adopting the consequent measures suitable to remove the effects of discrimination, if considered harmful to the principle of non-discrimination or integrating the illegitimate reaction, without however interfering in the powers of the public administration, except in the usual and physiological limits of the order of the incidental disapplication for the purposes of the protection of the subjective rights in dispute” (Cass. Joint Chambers, Order No. 3670/2011).

- ▶ Reversal of the burden of proof, in accordance with ECtHR jurisprudence: it is up to the defendant to prove the non-existence of discrimination when the plaintiff provides, also with statistical evidence, factual elements indicative of discriminatory conduct;
- ▶ Territorial jurisdiction determined by reference to the domicile of the claimant who claims to be a victim of discrimination;
- ▶ Powers of the judge: order to pay compensation for damages (including non-pecuniary damages), an order to cease discriminatory behaviour and the adoption of prescriptions (also valid with regard to the public administration) useful for removing the effects and the adoption, within certain time limits, of a plan for removing the ascertained discrimination; when the ascertainment of the discrimination is attributable to beneficiaries of public grants or awarding of contracts, the judge, with the decisional measure, shall notify the public bodies that have provided for the granting of benefits, which shall revoke them and, in the most serious cases, may prohibit access to further grants, financial relief, contracts, etc. for two years;
- ▶ Art. 90 quater cpp - Condition of particular vulnerability;
- ▶ Publicity: possibility of publication of the measure in a national newspaper.

■ Final measures are endowed with particular binding force (Art. 44 Legislative Decree No. 286/1998). Civil protection is also assisted by a criminal sanction: Paragraph 8 of the Article provides for the lack of execution of the measure being punishable under Article 388, Penal Code.

■ The establishment of discrimination in civil law does not require the existence of the subjective element, i.e. the express purpose or awareness of the perpetrator, thus differing from the penal provisions which in criminal law require the existence of this element.

■ Against this background, with the establishment of the UNAR (National Anti-Racial Discrimination Office) within the Presidency of the Council of Ministers (National Equality Body and National Roma Contact Point), and through the NGOs accredited to it (in particular for collective discrimination, the only ones for which representative bodies can also act directly), measures have been adopted for the advance payment of court costs in favour of the person requesting protection against discrimination, costs which are then recovered by the losing party if the case is won; UNAR has signed a protocol with the Consiglio Nazionale Forense (National Bar Council) for the management of a solidarity fund for victims of discrimination, which aims to provide legal assistance to victims of discrimination who intend to take legal action to protect their rights and who do not benefit from legal aid.

B. Italian citizenship

■ Analysis of the main provisions of Law No. 91/1992 - the principle of *jus sanguinis* and the principle of *jus soli* - poverty/wealth and access to citizenship, comparison with other systems - access to citizenship at the age of 18 for foreigners born in Italy: evolution of legislation and case-law - loss of citizenship due to parental fault - discussion of a court case on Italian citizenship involving a person of Roma origin.

Relevant normative texts

- ▶ Law 5 February 1992, No. 91, New Provisions on Italian Citizenship
- ▶ Law-Decree No. 67/2013, Art. 33, para.1.
- ▶ D.p.r. No.572/1993

Case-Law

European Union Court of Justice (hereinafter, CJEU)

- ▶ CJEU, *Janko Rottmann*, 2 marzo 2010, C-135/08

Constitutional Court:

- ▶ *Corte Costituzionale, sentenza 16 aprile 1975, n. 87*
- ▶ *Corte Costituzionale, sentenza 9 febbraio 1983, n. 30*
- ▶ *Corte Costituzionale, sentenza 22 maggio 2009, n. 159*
- ▶ *Corte Costituzionale, sentenza 7 dicembre 2017, n. 258*

Court of Cassation, civil law

- ▶ *Cassazione civ. 16.01.2009, n.151*
- ▶ *Cassazione civ. 24.03.2009, n.25598*
- ▶ *Cassazione civ. 24.04.2009, n.17562*
- ▶ *Cassazione civ. 10.07.2009, n.41819*
- ▶ *Cassazione civ. 17.05.2017, n. 12380*

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Savino, Mario, *Oltre lo ius soli. La cittadinanza italiana in prospettiva comparata*, E.S., 2014

Pastore Ferruccio, *La comunità sbilanciata. Diritto alla cittadinanza e politiche migratorie nell'Italia post-unitaria*, in *laboratorio CeSPI*, 2002

Rauti, Aessio, *La decisione sulla cittadinanza tra rappresentanza politica e fini istituzionali*, E.S., 2020

Latorre, *Ubi malum, ibi patria. Cittadinanza e sofferenza*, in *il Mulino*, 2019.

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<https://www.secondegenerazioni.it/about/>

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<https://www.supremecourt.uk/cases/uksc-2021-0063.html>

C. Ascertainment of Cases of Statelessness in Italy

■ Who is stateless - the two United Nations Conventions on Statelessness - differences between the different types of documents, birth certificate, passport, identity card, role in ascertaining statelessness - ways of ascertaining statelessness status in Italy – weakened burden of proof - rights of stateless persons in Italy - discussion of a court case on statelessness with a Roma applicant.

Relevant normative texts

- ▶ 1954 UN Convention on Statelessness
- ▶ 1961 UN Convention on the Reduction of Statelessness
- ▶ **Art.17, Regulations on Italian citizenship:** regulates the administrative procedure for ascertaining the status of stateless person.
- ▶ **Art.19-bis, Legislative Decree No. 150/2011, introduced by Law-Decree 17 February 2017, No. 13, converted with amendments by Law 13 April 2017, No. 46:** regulates the judicial procedure in matters of statelessness, providing that disputes concerning the ascertainment of the status of statelessness are governed by the summary procedure of cognition and that the competent court is the seat of the specialised section on immigration, international protection and free movement of EU citizens of the place where the applicant has their abode.
- ▶ **Art.11, para. 1, President of the Republic Decree (D.p.r.) No. 394/1999:** it provides for the issuance of a stateless permit in favour of “a foreigner who already holds a residence permit for other reasons, for the duration of the [...] recognition procedure”.
- ▶ **Art. 6, Legislative Decree No.286/1998, as amended by Legislative Decree No.130/2020:** it provides for the possibility of converting the permit to wait for statelessness into a work permit.

Case-Law

ECtHR, *Hoti v. Croatia*, Judgment of 26 April 2018

Court of Cassation, Judgment No. 4262 of 2015: clarifies that the stateless person has a weakened burden of proof, "given the nature of the rights to be protected and the assimilation of the condition of the applicant for stateless status to that of the foreigner applying for international protection, the *onus probandi* falling on the former must be considered equally attenuated, in the sense that any gaps or need for supplementary investigations must be filled with the exercise of investigative powers - duties of the judge", the principle was also reiterated in Judgment No. 28153/2017.

Court of Cassation, Order No.28153/2017: this is the judgment in which the Court of Cassation explains how the reasoning must be carried out to ascertain the stateless status of an applicant and the relevance of consular certificates in such proceedings.

Court of Cassation, Order No.16489/2017 of 19 June 2019: this decision clarifies that even the *de facto* stateless person, i.e. the person who has not yet started the procedure to ascertain their status, is protected from expulsion.

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La Tutela degli Apolidi in Italia, Giulia Perin, ASGI with support from Open Society, 2017

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<http://www.oas.org/en/iachr/reports/pdfs/DominicanRepublic-2015.pdf>

D. Access to the status of legally residing citizens

■ European citizens and the discipline applicable to them. Third-country nationals and the system of immigration law in Italy - fundamental principles - the protection of private and family life in the Italian legal system from the immigration law standpoint - residence permits for categories of vulnerable foreigners - the residence permit for "special protection" - discussion of a court case concerning access to regularity of residence involving a Roma person.

Relevant normative texts

European citizens

- ▶ Legislative Decree 6 February 2007 No.30

Third-country nationals

- ▶ Legislative Decree 25 July 1998, No. 286, Unified Text/Consolidated Act on *Immigration and provisions on the situation of the foreigners*
- ▶ D.P.R. dated August 31, 1999, No. 394
- ▶ Legislative Decree 19 November 2007, No. 251
- ▶ Legislative Decree 28 January 2008, No.25

Readings

Paolo Morozzo della Rocca, *Immigrazione, Asilo e cittadinanza*, 2021.

Paolo Bonetti, Alessandro Simoni e Tommaso Vitale (a cura di), *La condizione giuridica di rom e sinti in Italia*, Giuffrè, 2011.

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E. Access to fundamental rights

■ The Constitutional Court, on several occasions, has recalled - as quoted extensively in the National Strategy for Roma, Sinti and Caminanti Inclusion, 2012 - 2020 (p. 76 et seq.) that there is “an inalienable core of fundamental rights, including social rights, in respect of which no distinction between citizens is permitted (cf. Judgment 187/10); outside that core, any difference based on the ownership or otherwise of the status civitatis must be supported by a ‘reasonable correlation’ between the exclusion and the purpose pursued by the rule (Judgments Nos. 40/2011; 187/10; 285/09; 11/09; 306/08; 432/05)”.

1. Registration at birth

■ The importance of birth registration: consequent rights - consequences of failure to register at birth - the various solutions adopted in other legal systems - the solutions adopted by the Italian legal system - examination of a case involving a Roma mother without any documents.

Relevant normative texts

The New York Convention on the Rights of the Child of 1989, ratified and made enforceable in Italy by Law No. 176/1991

Italian Civil Status Regulations, approved by Presidential Decree No. 396 of 3 November 2000

Case-Law

ECtHR, *Marckx v. Belgium*, judgment of 13 June 1979

QUIZ

A Roma woman has no identification document. When she gives birth to her first child, the midwife asks her to hand over any document, even an expired one, so that she can prepare the birth declaration. The new mother declares that she has no way of identifying herself but that she is called by a certain name, indicating her place and date of birth. Will this mother be entitled to recognise her child, and will the birth of the child be registered beforehand?

- A) No, the child may not be registered or recognised until the woman's identity has been established by means of an identification document; the woman could in fact declare a false name and thus legally constitute a filial relationship with a woman other than the real mother; if she had a document, this risk would be avoided by checking the photo;
- B) The child will be registered at birth under the name given by the mother, in order to avoid the child being deprived of a legal identity, but in order to establish the relationship with the mother it will be necessary for her to obtain a document first;
- C) The mother may both declare the birth of the child and recognise the child by having two witnesses identify her and confirm her identity.

2. Access to healthcare

■ The universal nature of the right to health in Italy - the Consolidated Act on Immigration (TUI on Immigration) and the provisions regarding the right to health - access to health for non-European citizens and European citizens - access to health for foreigners who do not comply with the rules on residence - the evolution of Italian law on the subject.

Relevant normative texts

- ▶ Art. 32, Constitution
- ▶ Legislative Decree No. 286 of 25 July 1998, Consolidated text of provisions governing immigration and rules on the condition of foreigners, in particular, Art. 34 et seq.
- ▶ State-Regions and Autonomous Provinces Agreement signed on 20.12.2012
- ▶ Decree of the Presidency of the Council of Ministers (D.P.C.M.) 12.01.2017 (regarding the definition and updating of essential levels of assistance)
- ▶ Law No. 3/2018, Art. 3, Application and dissemination of gender medicine in the National Health Service

Case-Law

Order of the Court of Venice of 19 October 2020 on the content of the right to health for minors not legally residing in Italy, available at <https://www.asgi.it/banca-dati/tribunale-di-venezia-ordinanza-19-ottobre-2020/>



Readings

Strategia Nazionale Inclusione Rom, Sinti e Caminanti, 2012-2020

Narrative Inquiry: A Dynamic Approach, Daiute C., 2013

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<http://www.lavoro.gov.it/temi-e-priorita/infanzia-e-adolescenza/focus-on/integrazione-rom-sinti-e-caminanti/Documents/Strategia%20Nazionale.pdf>

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www.simmweb.it

3. Access to the right to housing

General outlines and constitutional profiles of the social right to housing - substantive and comparative profiles - the solution adopted in Italy: benefits outside the core area and the question of “territorial rootedness” - the rules of the Consolidated Act on Immigration - discrimination in access to housing: protections provided for in European and Italian law - discussion of a case of access to housing involving a Roma person.

Relevant normative texts

- ▶ Art. 11, para. 1, ICESCR
- ▶ Art. 47, Constitution
- ▶ T.U.I. No. 286/1998 (Arts. 40 et ff.)

Case-Law

- ▶ ECtHR, *Moldovan and Others v. Romania* (No. 2), nn. 41138/98 and 64320/01, 12 July 2005
- ▶ ECtHR, *Wintestein and Others v. France*, 17 October 2013
- ▶ ECtHR, *Bagdonavicius and Others v. Russia*, 11 October 2016
- ▶ ECtHR, *Hudorovic and Others v. Slovenia*, 10 March 2020
- ▶ ECtHR, *Hirtu and Others v. France*, 14 May 2020

European Court of Justice

- ▶ European Court of Justice (Grand Chamber), *CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia*, C-83/14, 16 July 2015

European Committee of Social Rights of the Council of Europe

- ▶ ECSR, *International Movement ATD Fourth World v. France*, Case No.33/2006, December 5, 2007, Items 149-155
- ▶ ECSR, *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece*, Case No.49/2008, December 11, 2009
- ▶ ECSR, *European Roma Rights Centre (ERRC) v. France*, Case No. 51/2008, October 10, 2010
- ▶ ECSR, *European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, Case No. 39/2006, December 5, 2007

Constitutional Court

- ▶ Constitutional Court, Verdict dated 7 April 1998, No. 404
- ▶ Constitutional Court, Verdict dated 20 July 2018, No. 166
- ▶ Constitutional Court, Verdict dated 9 March 2020, No. 44

Readings

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4. Access to the right to education

■ General outlines and constitutional profiles of the right to education - substantial application of Art. 34 of the Constitution in order to guarantee full effectiveness and free access to the right to study.

■ Identification of national strategies to prevent any discrimination in the access to kindergartens and preschools and to promote the enrolment and school attendance of Roma, Sinti and Caminanti (RSC) minors; reducing the number of RSC students dropping out of school in first and second grade; monitoring statistically, with proxy data, any changes in the access, attendance and school success of RSC students; support learning and the acquisition of school competences and skills for all RSC children; promote the active participation of RSC families in their children's school life and co-operation between educational institutions, families and RSC communities, including through the use of cultural mediators; increase the participation of young RSC people in university education.

■ Discussion of a case of access to education concerning Roma children.

Relevant normative texts

- ▶ Art.12, International Covenant on Economic, Social and Cultural Rights
- ▶ Articles 30 – 34, Constitution
- ▶ Act No. 285/1997

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QUIZ

According to the Guidelines for the Reception and Integration of Foreign Pupils, dated 1 March 2006, after foreign families have submitted their application for enrolment, either online or during the course of the year, the school office requires the following documents: residence permit, health documents and any previous school documents. What happens if I do not have a residence permit?

- A) The school cannot enrol the child.
- B) In the absence of a residence permit, the school enrolls the foreign child anyway since the irregularity does not affect the right to education.
- C) The school not only does not proceed with the enrolment but is obliged to notify the competent authorities of the irregularity of the pupils who apply to attend the school.
- D) The secretary's office suspends the enrolment procedure of the pupil, who has been found to be irregular, pending the issue of a residence permit by the Immigration Office of the Police Headquarters of the province where the minor is located.
- E) The school office collects applications for enrolment made by irregular foreign citizens, arranging separate classes from the rest of the pupils and with differentiated school programmes.

5. Access to the right to work

General outlines and constitutional profiles of the right to work; identification of national strategies for the promotion of training and non-discriminatory access to training courses aimed at labour market integration and business creation; the dissemination of tools, methods and devices for the regularisation of irregular or precarious work and the development of entrepreneurship and self-employment; the development of individualised accompaniment paths to the labour market for Roma women and support for the access of Roma under 35 years of age to the system of opportunities and facilities provided for youth entrepreneurship and youth employment in general.

Normative reference texts

- ▶ Articles 1, 4, 35 and 36, Constitution
- ▶ T.U.I. No. 286/1998
- ▶ Law Decree No.130/2020

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G. Zagrebelsky, *Fondata sul lavoro. La solitudine dell'articolo 1*

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F. Violence against women, including forced marriage

One woman in three has been a victim of violence in her lifetime, as the Italian National Institute of Statistics (ISTAT) indicates in its latest studies. There is no doubt that violence has its origin in various forms of discrimination, which in the case of Roma women are aggravated by multiple and intersecting discrimination.

In this - as in other contexts - under-reporting and under-registering are relevant: and for both, information and training on human rights and non-discrimination are essential, as the UN CEDAW Convention and the Council of Europe's Istanbul Convention clearly indicate.

1. Violence against women

■ Analysis of the main provisions on gender-based violence

- ▶ The concept of gender-based violence in European and international contexts, notions of 'domestic violence' and 'witnessing violence'; gender-based violence and discrimination, violation of human rights (in the Istanbul Convention defined as: "all behaviour capable of causing harm of a physical, sexual, psychological or economic nature committed within the family or otherwise, predominantly against women or as such or affecting the female gender in a disproportionate manner").
 - **Evolution of the legislation on the protection of women victims of gender-based violence** (Law No. 66 of 15 February 1996 ("Rules against sexual violence") relocated the criminal offences punishing such acts from the category of offences against public morals and public decency to that of offences against the person (individual sexual freedom).
 - **The objectives of the new regulatory interventions starting with Law No. 119 of 15 October 2013:** more effective criminal repression, addressing the structural causes of violence, recognising priority treatment of gender-based violence proceedings, improving co-ordination between civil and criminal judicial authorities, reducing forms of secondary victimisation; implementing a multilevel protection system for those who suffer these crimes - (introduction of the crime of persecutory acts in 2009 (Art. 612 bis c.p.). (introduction of the crime of persecution in 2009 (Art. 612 bis c.p.)
 - In 2013, the first 'femicide' law was adopted, providing for new aggravating circumstances and mandatory arrest in flagrante delicto for ill-treatment and stalking. It introduces obligations to inform the offended person of measures taken in the course of preliminary investigations against the suspect for offences committed against them and introduces assistance plans and support services for victims.
 - In July 2019, the so-called 'Code of Red' law was adopted in order to respond to the need for more effective and timely protection of the victim of crimes of domestic and gender-based violence, i.e. 'committed in family contexts or within cohabitation relationships'; to protect the woman reporting the crime from being exposed to the risk of violence. The new provisions of Law No. 69 are aimed at improving the protection of victims of domestic violence and gender-based violence (i.e. 'committed in family contexts or in the context of cohabiting relationships'), and at protecting the reporting woman from situations of further compromising her psycho-physical safety, as well as at bringing the Italian legal system up to the standards required by supranational legislation and the judgments of the European Court of Human Rights). The new provisions of Law No. 69/19 (summary of the main innovations: the obligation, for the judicial police, to transmit immediately, also orally, the news of the offence (Art. 347, paragraph 3 of the Code of Criminal Procedure) and, for the Public Prosecutor, the obligation to obtain information from the injured party within three days of registration of the news of the offence (Art. 362, paragraph 1-ter of the Code of Criminal Procedure) as well as to proceed without delay to carry out the acts of investigation delegated by the Public Prosecutor, increase of the edictal penalties, extension to one year of the deadline for filing the complaint, provision of funds for the specialisation of the officers; measures affecting the prison treatment and rehabilitation of convicted persons, increase of the resources for the compensation of victims of intentional violent crimes (Art. 20, Law No. 69/19, and Law Decree dated 22/11/19, Ministerial Decree of 7 July 2020 introducing measures to support orphans of domestic crimes and foster families), introduction of new crimes).
 - The minimum standards on rights assistance and protection of victims of crime. The Decree-Law No. 212 of 15 December 2015 implementing Directive 2012/29/EU of the EU Parliament and Council.

Relevant normative texts

- ▶ Law No. 66/1996
- ▶ Law No. 38/09
- ▶ Law No. 119/2013
- ▶ Law Decree No.212/2015
- ▶ Law No. 69/2019
- ▶ List of offences identified by the national legislator as expressing gender-based violence (in accordance with Directive 2012/29/EU):

- ▶ Articles 572, 609 bis, 609ter, 609quater, 609quinquies, 609octies of the penal code, 612bis, 612ter, 582, 593quinquies, 576, para.1, nn, 2,5,5.1 and 577, para. 1 and 2, of the penal code.

Case-Law

ECtHR

- ▶ *M.C. v. Bulgaria*, 2003, *Talpis v. Italy*, 2016; *J.L.v. Italy*, 2021

Constitutional Court

- ▶ Verdict No. 1/2021, free legal aid, including to the victims of sexual violence

Court of Cassation

- ▶ Cass. Pen sez. VI n.55/03 ; Cass. Pen. Sez VI, n. 46300/08 ; Cass. SS.UU, n.10
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2. Forced marriage

■ The coercion or induction to marriage; measures to contrast the phenomenon of the so-called forced marriages and child brides (Art. 37 Istanbul Convention):

- ▶ Main features of forced marriages: coercive ways of extortion of consent; predominantly family dimension of the coercion of marriage; the transnationality of the phenomenon, distinction from early marriage;
- ▶ The new aspects of the new case-law introduced by Law No. 69 /2019: the criminal relevance of the phenomenon as an important tool for the empowerment of victims and as an aid for social workers and educational institutions;
- ▶ Art. 558bis of the Penal Code (“*whoever, with violence or threat, forces a person to contract a marriage or a civil partnership is punished with imprisonment from one to five years. The same punishment applies to anyone who, taking advantage of the conditions of vulnerability or psychological inferiority or need of a person, with abuse of family, domestic or work relations or of the authority deriving from the custody of the person for reasons of care, education or education, supervision or custody, induces that person to enter into a marriage or civil partnership. The penalty is increased if the facts are committed to the detriment of a minor of eighteen years. The penalty shall be from two to seven years of imprisonment if the acts are committed to the detriment of a child below the age of fourteen. The provisions of this article also apply when the fact is committed abroad by an Italian citizen or a foreigner residing in Italy or to the detriment of an Italian citizen or a foreigner residing in Italy*”)
- ▶ Data and case histories (e.g. September 2019 in Pisa, arrest of a Bosnian citizen of Roma ethnicity, also for the crime of induction to marriage; in 2006 and 2018 the murders of Sana Cheema and Hina Saleem for having refused a marriage in their country of origin).

Relevant normative texts

- ▶ Law No. 69/2019
- ▶ Law Decree No. 251/2007
- ▶ Arts. 84, 117, 122, civil code
- ▶ Art. 558bis, penal code

Case-Law

ECtHR case-law

- ▶ *Volodina v. Russia*, 2019, *M. and Others v. Italy and Bulgaria*, 2012, *Z.H. and R.H. v. Switzerland*, 2016

Constitutional Court

- ▶ *Verdict No. 27/69 on the freely consent to the marriage*

Court of Cassation

- ▶ *Corte di Cass. Sez. VI- 1 civile, 18 novembre 2013/25873; Corte Cass Sez. I civile, n. 28152/17 Tribunale di Venezia Sez. specializzata immigrazione, decreto 7 maggio 2019 n. 3866/19; Corte di Cass sez. I civile, n. 6573/2020*

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Teaching method

■ Face-to-face, online and/or hybrid, depending on the needs and the situation at a local level (duration may vary depending on the availability from two hours to two days, in addition to time required for exercises such as quizzes and the analysis of real cases according to the above-mentioned clinical approach).

■ *Quiz and/or Negotiation of a relevant draft law/provision on the following issues:*

- Systemic support of qualified personnel (cultural mediators, social workers, psychologists, interpreters) when the victims of violence are foreign women, refugees, without residence permits or identity documents.
- Inclusion of the offence referred to in Art. 58bis of the Penal Code in the list of offences that is made in the Red Code Law and that identifies the category of cases that punish acts of gender-based violence.

QUIZ MODULE 1⁴⁰

1. Which of the following international standards provides for the “right to citizenship”?

- a. Universal Declaration of Human Rights
- b. Covenant on Civil and Political Rights
- c. CEDAW Convention
- d. Convention against Torture
- e. Convention on Enforced Disappearances

2. The CEDAW Convention

- a. In Article 1 it defines discrimination against women, including gender-based violence, understood as violence against a woman as a woman
- b. Places violence perpetrated by both a state and a private individual on the same footing and therefore applies to both actors
- c. Does not address gender stereotypes, having been drafted with the aim of protecting domestic and workplace violence
- d. State parties are not obliged to draw up a periodic report as the Convention is not binding
- e. Provides that the definition of “gender-based violence” does not include the aspect of “torture and inhuman and degrading treatment”, as these are referred to the Convention against Torture

3. The Universal Periodic Review is:

- a. a review that is drawn up by States every ten years to examine the national human rights situation
- b. was introduced by the United Nations Security Council in 2011 as the Universal Periodic Review (UPR)
- c. a country review of the national human rights situation, based on three documents: one country report, one collection of information by the United Nations and a synthesis of information from civil society and the NHRIs
- d. a process divided into three stages, one of which is oral, during which the State under review has only the right of reply to the reports submitted by non-governmental organisations
- e. a two-stage process, at the end of which a document is drafted by the Secretary of the Human Rights Council containing obligations on States to be concluded by the next cycle of review

4. Multiple and intersectional discrimination means:

- a. Discrimination based on more than one factor all occurring at the same time
- b. Discrimination based on several factors, which are different each time and occur at different points in time
- c. Discrimination in which several discriminating factors interact to further aggravate the person’s situation
- d. Discrimination in which several factors of discrimination interact with each other, but which can still be distinguished and separated, so that they can be differentiated when necessary
- e. Discrimination involving gender and religion, two areas where multiple and intersectional discrimination is most likely to occur

40. It is possible to have more than one correct answer
Correct answers: 1.a; 2.None; 3.a; 4.c; 5.a

5. When we talk about RST communities we refer to:

- a. Italian citizens; (*de facto*) stateless persons born in Italy of *de facto* stateless persons; foreigners who have been granted the right to asylum or subsidiary protection; foreign citizens belonging to other EU countries; citizens of non-European countries
- b. stateless persons, born in Italy of *de facto* stateless persons; foreigners who have been recognised as having the right to asylum or subsidiary protection; foreign citizens belonging to other EU countries; citizens of non-European countries
- c. Italian citizens; (*de facto*) stateless persons born in Italy of *de facto* stateless persons; foreigners who have been granted the right to asylum or subsidiary protection
- d. only to foreigners who have been recognised as having the right to asylum or subsidiary protection and to foreigners from non-European countries
- e. none of the above

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QUIZ MODULE 2⁴¹

1. Article 14 of the ECHR

- a. states the prohibition of discrimination in relation to the fundamental rights and freedoms recognised by the Convention, but is not independently invocable before the ECHR Court
- b. provides for the prohibition of discrimination in relation to the fundamental rights and freedoms recognised by the Convention and is individually invocable in an appeal to the ECHR
- c. establishes the prohibition of discrimination in relation to the fundamental rights and freedoms recognised by the domestic law of each State Party to the Convention
- d. provides an exhaustive list of potential forms of discrimination
- e. cannot be invoked in cases of so-called 'indirect discrimination'

2. The European Social Charter, adopted by the Council of Europe in 1961 and revised in 1996:

- a. is a treaty binding only on the states that are members of the EU
- b. establishes the prohibition of discrimination against linguistic and ethnic minorities
- c. promotes the principle of non-discrimination in the enjoyment of social rights, such as the right to work, the right to fair remuneration and the right to social security
- d. is a treaty whose violation can be challenged before the ECHR
- e. is a treaty binding on all States that have ratified the ECHR

3. An important innovation introduced by the EU with Directive 2000/43/EC, which implements the principle of equal treatment between persons irrespective of racial or ethnic origin, is:

- a. the obligation of states to implement measures to promote the culture of national minorities
- b. the reversal of the burden of proof on the defendant
- c. the obligation of States to give effect to equal treatment of individuals in access to employment and the welfare state
- d. the affirmation of the principle of non-discrimination in relation to the enjoyment of social rights, such as access to work and welfare
- e. the establishment of the European Commission against Racism and Intolerance (ECRI)

4. The States Parties to the Council of Europe Convention on preventing and combating violence against women and domestic violence shall undertake

- a. Exclusively to punish acts of violence against women and domestic violence committed by private actors
- b. exclusively to establish an appropriate legal framework to repress crimes of violence against women
- c. simultaneously implement measures to prevent acts of violence against women, enact appropriate anti-violence legislation, conduct diligent investigations, punish perpetrators and ensure the protection of victims
- d. to repress discriminatory attitudes against women, unless they belong to the customs of the community of origin
- e. exclusively to compensate the victims of acts of violence

5. Referring to the case-law of the European Court of Human Rights, what is the general relationship between violence against women and the violation of the principle of non-discrimination?

- a. none, as these violations are independent of each other
- b. there are cases where both violations can be found to exist
- c. all gender-based violence is also a form of discrimination, as it constitutes a violation of the right to equal protection under the law
- d. not every case of gender-based violence is a form of discrimination
- e. both are violations of human rights

41. Correct answers: 1.a; 2.c.; 3.b; 4.c.; 5.b, e; 6.a; 7.d; 8.b; 9.e

6. Direct discrimination as referred to in Article 2 of Directive 2000/43/EC

- a. occurs where a person is treated less favourably on grounds of racial or ethnic origin than he or she is, has been or would be treated in a comparable situation
- b. Applies only to persons in the public sector
- c. Applies only to persons in the private sector
- d. Applies only where there is a difference in treatment based on nationality
- e. Applies to both the public and private sectors excluding bodies governed by public law

7. Indirect discrimination

- a. In any case cannot be proved
- b. Does not afford adequate means of legal protection
- c. Is a provision, criterion or practice which produces no adverse effect but only harassment which does not qualify as discrimination
- d. It is a provision, criterion or practice which appears to be neutral, but which is likely to produce a discriminatory effect
- e. It is always justifiable because it is not unlawful discrimination

8. The Istanbul Convention:

- a. Applies to the elderly and children
- b. Is the first legally binding international instrument aimed at creating a comprehensive legal framework to protect women against all forms of violence
- c. Is the first legally binding international instrument aimed at specifically protecting women against domestic violence
- d. It does not address gender-based violence against women
- e. Does not repress violence against women if it is provided for in the customs of the community of origin

9. The European Commission's Communication No. 173/2011 asks states to develop:

- a. A law that actively contributes to the integration of RSTs into society
- b. A regulation that actively contributes to the integration of the RST into society
- c. A treaty that actively contributes to the integration of the RST into society
- d. A Directive that actively contributes to the integration of the RST into society
- e. A strategy that actively contributes to the integration of the RST into society

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QUIZ MODULE 3⁴²

1. Does Law No. 482 of 15/12/99 on “Rules for the protection of linguistic and historical minorities” recognise the Roma among linguistic minorities?

- a. No, because it is defined as a “diffuse minority”, i.e. without a recognised territorial concentration.
- b. Yes, because it is recognised as a “territorial language”.
- c. Although it is not a “territorial” language, it is recognised as a linguistic minority in accordance with the principles of the European Charter of the Regions.
- d. It is not a linguistic minority because of the small number of Roma on Italian territory.
- e. Yes, because of the massive and concentrated presence of the Roma population in Italy.

2. The Roma, Sinti and Caminanti communities in Italy mainly have the legal status of

- a. *de facto* stateless person
- b. Non-EU citizens
- c. Citizens of other Member States
- d. Italian citizens
- e. Asylum seeker

3. A Roma woman has no identification document. When she gives birth to her first child, the midwife asks her to give her any document, even an expired one, so that she can prepare the birth declaration. The new mother declares that she has no way of identifying herself but that she is called by a certain name, indicating her place and date of birth. Will this mother be entitled to recognise her child, and will the birth of the child be registered?

- a. No, the child cannot be registered or recognised until the woman’s identity has been established by means of an identification document; the woman could in fact declare a false name and thus legally constitute a filial relationship with a woman other than the real mother; if she had an identification document, this risk would be avoided by checking the photo;
- b. The child will be registered at birth under the name given by the mother, in order to avoid the child being deprived of a legal identity, but in order to establish the relationship with the mother it will be necessary for her to obtain a document first;
- c. The mother may both declare the birth of the child and recognise the child by having two witnesses identify her and confirm her identity.
- d. A woman who does not have an identification document is allowed to declare the birth of her child and recognise her filiation only if she has previously, in the months preceding the birth, applied for a permit for “special protection”, as provided for in Article 19.1.1 of Legislative Decree No. 286/1998, Consolidated Act on Immigration.
- e. No, after the birth, mother and child will be deported to the place of birth declared by the mother.

4. Under Article 9 of Law No. 91 of 1992, after how many years of residence may a stateless person apply for Italian nationality by naturalisation?

- a. 7 years
- b. 3 years
- c. 5 years, as for refugees
- d. 2 years
- e. 10 years, as for foreigners

⁴² It is possible to have more than one correct answer
Correct answers: 1.a; 2.c & d; 3. c; 4.c; 5.e; 6.a, c; 7.b

5. If the woman victim of domestic violence is a foreigner and irregularly resident in Italy, is she entitled to protection by the authorities?

- a. No, the case must be reported to and dealt with by the country of origin.
- b. No, because possession of citizenship is an essential condition for access to justice
- c. Yes, but only in cases of serious violence ascertained in the course of criminal proceedings
- d. Yes, the State has the duty to prevent cases of violence, but it cannot allow the illegal stay on Italian territory
- e. Yes, it is possible to obtain the residence permit for victims of domestic violence introduced by art. 18-bis, TUI, by Law No. 119/2013 or, alternatively, the special residence permit contemplated by art. 19 of the same Law, together with the access to justice and the necessary protection measures

6. Which of the following offences have not been introduced by Law 69 of 2019, known as “code red”?

- a. Article 387 of the Criminal Code. Violation of the measures of removal from the family home and of the prohibition to approach the places frequented by the offended person
- b. Article 558bis of the Criminal Code. Coercion or induction into marriage
- c. Article 593ter of the criminal code Non-consensual interruption of pregnancy
- d. Article 612ter of the Criminal Code. Unlawful dissemination of sexually explicit images or videos better known as “Revenge porn”
- e. Article 583quinquies of the Criminal Code, “Deforming permanently one’s face by acid attack”

7. Italy was the first country in Europe to formalise the inclusion of the concept of “gender” in medicine with Law 3/2018 but what is meant by “gender medicine”?

- a. The study and recognition that between genders there are differences linked exclusively to the reproductive system;
- b. The study of the influence of biological differences, defined by sex, socio-economic and cultural differences, defined by gender, on the state of health and disease of each person;
- c. It is a neutral medicine, equal for all without any kind of distinction;
- d. It is a medicine which studies exclusively the influence of socio-economic and cultural differences, defined by gender, on the health status and disease of each person;
- e. None of the previous answers is correct.

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