

## FOREWORD

This is the first Report on the state of rights in Italy, born out of a project of “A Buon Diritto” Association. Protecting and making human rights effective is no far-fetched issue that only concerns remote lands, oppressed peoples and totalitarian regimes. In fact, it concerns us all directly. Thus, it is best to start from ourselves before we go touring the world to preach how valuable and indispensable those rights are. L'articoloTre is both a report and a project that may be termed political in nature. It is the report of a collective work documenting how all rights are protected or fail to be protected or are protected only in part – in our country. The underlying project is political as well, because it is the political project of the Constitution of the Italian Republic and of the equality principle that is a reflection of human dignity.

This work was born out of the observation that no regular reporting is available in Italy on the implementing status of fundamental human rights or on the safeguards aimed at protecting minorities. Sector-specific reports are published to focus on individual institutions – such as the prison system – or groups – sexual orientation minorities, Roma, Caminantes; still, there is no comprehensive record based on the regular observation and analysis of the extent to which those rights are actually afforded to and enforced by the respective holders – that is to say, individuals, social groups, and minority groups (whether on grounds of ethnicity, religious denomination, sexual orientation, social standing, disability status) as well as all those persons that may only exercise such rights in part, or for whom they are temporarily suspended or reduced (prison inmates, hospitalised psychiatric patients, individuals subjected to mandatory medical treatment, and so on). This is the starting point of the project by L'articoloTre, which draws inspiration from the equality principle in the Italian Constitution to evaluate and somehow “gauge” the recognition or non-recognition, the full or flawed implementation of the rights and safeguards that are closely related to the full exercise of

fundamental prerogatives of all individuals: from personal freedom to freedom of movement; from religious freedom to sexual freedom up to the ban on whatever type of discrimination and violence for whatever reasons.

The basic assumption underlying this project is a unified vision of the rights framework along with a full-fledged concept of the individual, i.e. the holder of those rights. In a historical perspective, the sequential affirmation of rights that differed in terms of their scope and nature has resulted into the differential categorization of such rights – which Thomas H. Marshall systematized on the basis of a historical criterion, namely that of succeeding generations of rights.

As recalled by Norberto Bobbio, “human rights, fundamental though they are, are historical rights; that is to say, they have developed under certain circumstances marked by fights to defend new freedoms against old powers, in a stepwise manner, neither all at once nor once and for all.” Civil rights, political rights, social rights, third- or fourth-generation rights, and so on: the fact that things do happen allows timescales to be developed continuously, so that time-honored differences are diluted into broader categories, or else what comes up today is separated more thoroughly from what surfaced yesterday or the day before that.

There is little doubt that Marshall’s approach was valuable in that it linked social rights to the type of citizenship that was taking shape in the age of the welfare State and in the face of the concept of a socially-oriented State based on the rule of law. Nevertheless, this approach lent itself to misunderstandings and fraudulent interpretations. The link between citizenship and rights resulted actually into “nationalistic”, ethnic or even “taxation-oriented” visions of the rights and their beneficiaries. The fact that such rights were categorized according to succeeding generations was at times misinterpreted to rank rights and their enforceability – civil rights first, then political rights and finally, if really necessary and if so permitted in an age of affluence,

social rights. It goes without saying that this was conditional in any case upon the “emergencies” encountered by public authorities. In this manner, the universality and interdependence of human rights were too often downplayed and made subordinate to favourable social, economic and international relationships.

Conversely, a new as well as consistent interpretation of democratic constitutionalism leverages the principle of human dignity to piece together the individual rights exactly by recognizing the all-round features of the individuals those rights are vested in. The 1947 Italian Constitution, the 1948 Universal Declaration of Human Rights, the 1949 Grundgesetz in Germany re-discovered the dignity of individuals as the ultimate rationale of the old and new freedoms that were enshrined in them and/or started existing through them.

The underlying assumption is the reversal of a long-standing distinction, whereby “dignity” was supposedly meant for the “dignitaries” – i.e., those who deserved being afforded superior standing. Conversely, it is every human being as such that is today considered to be worthy of such distinction. Thus, having passed muster according to the universalism that is a feature of modernity, dignity has become a benchmark for all the values such as freedom, equality and solidarity that make up the foundations of our societies and democratic regimes. If there is a lesson to be learnt from the history of the past two centuries, this is that there can be no freedom, no equality, no reciprocity where there is no recognition of the dignity of every human being in his relationships with other fellow beings.

The process leading to the affirmation and full recognition of rights within the social framework is nothing else but the process through which the human community has been evolving. The aspiration to a life that is just, free and lived with dignity is the ontological principle of the individual and collective needs underlying modern society. It can be argued that, starting at least from the end of the 18<sup>th</sup> century, the attention paid to fostering, disseminating and enjoying fundamental human rights has been expected to be a precondition

– enshrined in statutory instruments – for the political, social and economic practices of any civilized country. Still, like all evolutionary principles, this vision has never been translated fully into reality – whether as a precondition or as an aspiration, whether in its original version or by way of its subsequent developments. This is why it is both appropriate and daunting as a task that one should undertake to observe, evaluate, flag and foster actions and policies that can allow those principles to be made fully real.