in terms of respecting fundamental human rights. The Supreme Court expressly referred to the *Saadi v. Italy* Judgment, from which it inferred the obligation to verify, on a case by case basis, whether the applicant, as a consequence of the prospected expulsion, is likely to suffer torture and inhuman and degrading treatments or punishment at the place of destination. If such a risk is highly likely, the circumstance that the applicant is deemed to constitute a threat for the host community does not justify the expulsion measure since the principle of *non-refoulement*, as inferable from Article 3 ECHR (“[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment”), is absolute and without exception (SACCUCI, “Espulsione, terrorismo e natura assoluta dell’obbligo di *non-refoulement*”, I diritti dell’uomo. Cronache e battaglie, No. 1/2009, p. 36 ff.).

Even if the *Corte di Cassazione* invoked only the ECHR, the abovementioned principle has an analogous scope in other international human rights treaties of which Italy is Party, such as the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3) and the International Covenant on Civil and Political Rights (Article 7). However, some scholars consider that, being related to a norm of *jus cogens* – prohibition of torture –, the principle of *non-refoulement* enshrined in human rights protection systems have acquired at least customary nature (ALLAIN, “The Jus Cogens Nature of *Non-Refoulement*”, International Journal of Refugee Law, 2001, p. 533 ff.; LAUTERPACKT and BETHLEHEM, “The Scope and Content of the Principle of *Non-Refoulement*: Opinion”, in FELLER, TÜRK and NICHOLSON (eds.), *Refugee Protection in International Law. UNHCR’s Global Consultations on International Protection*, Cambridge, 2003, p. 87 ff.; GOODWIN-GILL and McADAM, *The Refugee in International Law*, Oxford, 2007).

Going back to the judgment under review, the Supreme Court stated that, if it has been adopted a deportation order against the applicant but that measure cannot be enforced because it would be in breach of the principle of *non-refoulement*, the Court is required to identify an appropriate alternative security measures. This at least until the human rights situation in Tunisia, as found by the ECHR, does not improve. The events of the spring of 2011 seem to unfold a positive perspective in this respect (the Italian text of the judgment is available at: <www.europeanrights.eu>).

ADELE DEL GUERCIO

XII. HUMAN RIGHTS

*Article 14 of the European Convention on Human Rights, in conjunction with Article 1 of Protocol No. 1 – Immigrants’ right to equality of treatment in the field of social assistance – Different treatment on the basis of holding residence permits for long-term residents – Access to essential social benefits as a fundamental human right*
With Judgment No. 187 of 28 May 2010, the Italian Constitutional Court addressed the issue of the legitimacy of establishing a distinction between citizens and legally resident foreigners when assigning social benefits.

The Court examined the case of a Romanian citizen legally resident in Italy suffering from a permanent invalidity, which had made her almost completely unable to work. Italian authorities had recognised her disability, and she had been placed on a special social security list as of May 2005, yet the applicant was denied the monthly benefit for disabled persons provided for under Article 13 of Law No. 118 of 1971 (GU No. 82 of 2 April 1971). Rejection of the application was based on Article 80, paragraph 19, of the Legge Finanziaria (Financial Law) of 2001 (Law No. 388 of 28 December 2000, GU No. 302 of 29 December 2000), which granted foreigners legally residing in Italy the same rights as Italian citizens on matters of social assistance and social benefits, provided they had been granted a long-term residence permit (carta di soggiorno). The carta di soggiorno, replaced in compliance with Directive 2003/109/EC (OJ L 319, Vol. 51, of 29 November 2008) by the EU long-term residence permit for third country nationals, in addition to requiring a minimum income and adequate housing, could only be granted after five years of legal residence in Italy. Since the applicant could only exhibit a residence permit valid for a shorter period of time, the benefit was denied to her.

Before the Legge Finanziaria was adopted, the Testo Unico (Legislative Decree No. 286 of 25 July 1998, GU No. 191 of 18 August 1998) established at Article 41 (entitled Social Assistance) the principle of equal treatment for foreigners and Italian citizens in the field of social assistance. The only condition required by Article 41 for eligibility to social assistance was entitlement to a residence permit valid for at least one year. The Legge Finanziaria, therefore, introduced a significant restriction by only granting social assistance to immigrants under the same conditions as citizens if they held a long-term permit (that is, to immigrants who had been legally residing in Italy for at least five years).

With an Order of 27 February 2009, the Court of Torino asked the Constitutional Court to decide whether the provision established under Article 80 of the Legge Finanziaria was compatible with Article 14 of the European Convention on Human Rights (ECHR) in conjunction with Article 1 of Protocol No. 1 to the Convention. The reference to rights established in the ECHR as direct parameters of the constitutional legitimacy of domestic norms was made on the basis of Article 117 of the Italian Constitution, which mandates compliance of Italian legislation with international obligations. References to a violation of the European Convention and constitutional legitimacy had been addressed in two significant judgments delivered by the Constitutional Court in 2007 (Judgments Nos. 348 and 349 of 2007), in which the Court offered important clarifications concerning the role played by Article 117.