**ITALY**

***Ministry of Foreign Affairs and International Cooperation***

*Inter-ministerial Committee for Human Rights*

*Comitato Interministeriale per i Diritti Umani*

**ITALY’S CONTRIBUTION**

**ON “CULTURAL RIGHTS AND PUBLIC SPACES”**

*June 2019*

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Following your query, as Special Rapporteur in the field of cultural rights concerning “Cultural rights and public spaces”, we are in a position to provide the following information:

**Introduction**

1. The (rigid) Italian Constitution determines the political framework for action and organization of the State. The fundamental elements or structural principles of the constitutional law governing the organization of the State are as follows: Democracy, as laid down in Article 1; the so-called *personalistic* principle, as laid down in Article 2, which guarantees the full and effective respect for human rights; the pluralist principle, within the framework of the value of democracy (Articles 2 and 5); the importance of work, as a central value of the Italian community (Articles 1 and 4); the principle of solidarity (Article 2); the principle of equality, as laid down in Article 3 (it is also the fundamental criterion applied in the judiciary system when bringing in a verdict); the principles of unity and territorial integrity (Article 5); and, above all, the relevant principles, including the social state, the rule of law and the respect for human rights and fundamental freedoms.

2. The Italian legal system aims at ensuring an effective framework of guarantees, to fully and extensively protect the fundamental rights of the individual. Indeed, we rely on a solid framework of rules, primarily of a constitutional nature, by which the respect for human rights is one of the main pillars.

* On a more specific note, the Italian Constitution envisages the protection of all rights and fundamental freedoms included in relevant international standards, such as the European Convention on Human Rights and Fundamental Freedoms, the Human Rights Universal Declaration or the International Covenant on Civil and Political Rights. The protection and promotion of rights – be it civil and political, economic, social and cultural, be it referred to freedom of expression or to the fight against racism or to the rights of the child and of women – constitutes one of the fundamental pillars of both domestic and foreign Italian policies.

3. Within the domestic system of protection of human rights, mention has to be made, among others, of the Italian Constitutional Court that deals only with infringements of a constitutional level (the Constitutional Court consists of fifteen judges; one-third being appointed by the President of the Republic, one-third by the Parliament in joint session, and one-third by ordinary and administrative supreme court).[[1]](#footnote-1)

4. The Constitutional Court exercises its duty as one of the highest guardian of the Constitution in various ways. It becomes active when it is called on. For example, it supervises the preliminary stages of referenda and is competent in case of presidential impeachment. Complaints of unconstitutionality may be submitted to the Italian Constitutional Court by central and local Authorities claiming that a state or a regional Act might be unconstitutional. Therefore, the Court monitors Authorities to see whether they have observed the Constitution in their actions. It also arbitrates in cases of disagreements between the highest State’s organs and decides in proceedings between central and local Authorities.

* Procedurally, the Court must examine *ex officio* (the prosecutor) or upon request of the plaintiff/defendant whether the provisions to be applied are in compliance with the Basic Law. When the court considers that an act is unconstitutional, such evaluation brings to a suspension of the *a quo* proceeding. Accordingly, a decision is made by the Court itself, pursuant to Art. 134 of the Italian Constitution. The constitutional court decides (and its decisions cannot be appealed on) disputes: 1. concerning the constitutionality of laws and acts with the force of law adopted by state or regions; 2. arising over the allocation of powers between branches of government, within the state, between the state and the regions, and between regions; 3. on accusations raised against the head of State in accordance with the Constitution. More generally, the Court decides on the validity of legislation, its interpretation and on whether its implementation, in form and substance, is in line with the Basic Law. Thus, when the court declares a law or an act with the force of law unconstitutional, the norm ceases its force by the day after the publication of its decision.

4. At a domestic level, mention has to be made, among others, of the role and functions of the Inter-ministerial Committee for Human Rights (acronym in Italian,CIDU). It was established in 1978, at the Ministry of Foreign Affairs and International Cooperation of Italy ([www.cidu.esteri.it](http://www.cidu.esteri.it)).

- In terms of composition, each Ministry appoints a specific human rights focal point participating in its work. The CIDU thus consists of, among others: Presidency of the Council of Ministers (acronym, PCM); Ministry of Justice; Ministry of Interior; Ministry of Education; Ministry of Labour; Ministry of Health; Ministry on Economic Development; Ministry of Defence; Ministry on Environment; Ministry on Agriculture; Ministry on Cultural Heritage; the National Office against Racial Discrimination; CSM; CNEL; **ISTAT**; Carabinieri Corps; Revenue Guards Corps (*Guardia di Finanza*); the National Association of Italian Municipalities (in Italian, ANCI); and the Italian Society for International Organizations (SIOI)).

5. By an inter-ministerial and participatory approach, CIDU is the National Mechanism for Reporting and Follow-up (NMRF) and performs the following tasks:

a) Review laws, regulations and administrative measures relating to HR commitments and pledges made at an international level;

b) Advisory activity on the adoption of provisions in line with relevant international obligations;

c) Coordination and reporting relating to international human rights standards - that Italy is requested to submit to the UN, Council of Europe, and other Organizations and mechanisms in the field of human rights;

d) Participation in international conferences and fora, such as the yearly sessions of the UN Human Rights Council (Geneva) and the UNGA Third Committee (New York);

e) Preparation of the national reports and consideration of Italy under the Universal Periodic Review Mechanism (UPR);

f) Elaboration of and focal point for the National Action Plan on Women, Peace and Security in accordance with Security Council Resolution 1325(2000);

g) Elaboration of the National Action Plan on Business and Human Rights.

6. The interaction with the Parliamentary Commissions in both the Chamber of Deputies and the Senate working in the field of human rights is carried out through constant contact and dialogue and on the occasion of periodic public hearings, by the CIDU President.

7. CSOs are included in the preparation of the reporting, in accordance with their specific competences and experience. They are also involved in conferences and events organized by the CIDU in cooperation with relevant Administrations as well as in online consultations for the compilation of national plan of actions, as occurred for example in the preparation of both the Italian NAPs on WPS and BHR, further establishing proper follow-up mechanism with their active participation . Moreover CIDU has established a dedicated position to get contacts and promote close relationships and collaboration with civil society.

**Turning to specific issues**

Art. 17 of the Italian Constitution envisages freedom of assembly: “(1) *All citizens have the right to assemble peaceably and unarmed. (2) For meetings, including those held in places to which the general public has access, no previous notice is required. (3) For meetings held in public places previous notice must be given to the authorities, that can prohibit them only on the grounds of proven risks to security or public safety*”.

- As for the latter, the denial by the senior police officer (*Questore*) must be motivated and can be challenged before the judicial Authorities. On the contrary, the lack of prior notice by the organizers triggers penal consequences.

Further, Art.18 sets outs: “(1) *Citizens have the right - and without authorization -to freely form associations for those aims not forbidden by criminal law. (2) Secret associations and associations pursuing political aims by military organization, even if only indirectly, are forbidden*”.

- As for the latter, it is the judicial Authority that has power to determine the closing down of an association in the event this finds it unconstitutional.

In terms of associations of major relevance, mention has to be made of political parties and trade unions as laid down in Art.49 and Art.39 of the Italian Constitution, respectively.

# On a more specific note, Art. 18, para. 1, of the Italian Constitution (1948) recalls the distinction contained in our Civil Code (1942) between recognized associations and those being not recognized, while guaranteeing the right of each person to freely associate with others “for purposes which are not prohibited by the penal law”, without a prior authorization.

# - In practical terms, what is allowed to the single citizen, *uti singulus*, it is also authorized to him/her in association, *uti socius*. From a substantial standpoint, freedom of association embodies both positive and negative aspects in terms of *facere (freedom to form or join an association)* and *non facere (freedom not to join or leave an association)*

Therefore, concerning **recognition and support for groups**, the Italian Constitution recognizes the value of citizens’ associations.

- According to the principle of “legitimate interests”, affirmed in general law on administrative process (Act No. 241/1990), opportunities to participate in decision-making process shall be given not only to individuals having an interest in the decision, but also to associations representing common interests, when such interests are likely to be influenced by the decision.

For additional information, please kindly refer to Common Core Document of Italy forming part of UN Treaty Body reporting, dated July 2016.

1. The constitutional court consists of fifteen judges; one-third being appointed by the Head of State, one-third by the Parliament in joint session, and one-third by ordinary and administrative supreme court. [↑](#footnote-ref-1)