**ITALY**

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

*Inter-ministerial Committee for Human Rights*

*Comitato Interministeriale per i Diritti Umani*

**ITALY’S CONTRIBUTION,**

**PURSUANT TO UNITED NATIONS**

**HUMAN RIGHTS COUNCIL RESOLUTION 40/10**

**(A/HRC/RES/40/10)**

*May 15, 2020*

**ITALY’S CONTRIBUTION**

 *To the attention of*

*freedomofreligion@ohchr.org*

Following your query, we are in a position to provide the following information, **for your information only**.

**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 – constitute one of the fundamental pillars of both domestic and foreign Italian policies.

3. The 1948 Basic Law determines the political framework for action and organization of the State. Among the “Fundamental Principles”, Article 3 of the Italian Constitution sets forth, as follows:

 *“All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.*

 *It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country”.*

4. 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). 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.

**Turning to specific issues – “Good Practices”**

5. All individuals, in Italy, can profess their own religion (or no religion at all). All religious Denominations benefits of “equal liberty” of expression, freedom of assembly, freedom of organization, freedom of worship.

6. More specifically, the Italian (rigid) Constitution guarantees the right to freedom of religion and worship. From a constitutional standpoint, Article 3 stipulates the principle of equality and non-discrimination, including on the ground of religion; Article 8 also stipulates that “*all religious Denominations are equally free before the law*” and “*Their relations with the State are regulated by law, based on (bilateral) Agreements (Intese), with their respective representatives*”; Article 19 further stipulates that “*anyone is entitled to freely profess his/her religious belief, both individually and collectively, to promote it, and also to celebrate religious rites in public or in private, provided they are not offensive to public morality*”; lastly, Article 20 forbids any special legal limitation or special fiscal burden at the expenses of religious associations and institutions with confessional aims.

 **-** In particular, the Italian Constitution devotes specific articles to freedom of religion: Article 3 states the principle of non-discrimination based on religious ground; Article 8 restates that all religious Denominations are equally free before the law and the non catholic ones can organize themselves freely and their relations with the State are based on a bilateral Agreement, called “Intesa”; Article 19 affirms that everyone is entitled to freely profess his/her own religious belief, both individually and collectively, to promote it, and also to celebrate religious rites in public or in private, unless they are not offensive to the public morality; lastly, Article 20 forbids any special legal limitation or special fiscal burdens at the expenses of religious associations and institutions with confessional aims.

 - Since 2014 new *Intese* (Agreements) have been signed with: the Italian Buddhism Institute – Soka Gakkai (in 2016); and, very recently (in August 2019), the Church of England.

7. The non-discrimination principle is one of the main pillars of the Italian Constitution.

8. **From a legislative standpoint**, the Italian Government introduced a comprehensive legislation by translating both EU Directives 2000/43 and 2000/78 in order to prohibit all forms of discrimination based on race or ethnic origin, in any area or sector, both private and public; and to regulate the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation, as regards employment and occupation.

9. Italy ratified the International Convention on the Elimination of all Forms of Racial Discrimination ICERD, by Act No.654/1975, referred to as “Reale Law”, as subsequently amended by Act No.205/1993, the so-called “Mancino Law”, and by Act No. 85/2006.[[2]](#footnote-2)

10. The Italian legal system includes specific provisions to combat racist and xenophobic speech, including those actions directed to spread ideas founded on racial or ethnic hatred and the incitement to commit acts of violence on racial, ethnic or religious grounds.

11. The legislation in force punishes the constitution of organizations, associations, movements or groups that have, among their purposes, incitement to discrimination or violence motivated by racial, ethnic or religious grounds. It also provides for a special aggravating circumstance for all crimes committed on the ground of discrimination or racial hatred.

12. More recently, by repealing previous provisions, Decree No. 21/2018 introduced in the Penal Code: Article 604-bis “Propaganda and incitement to commit a crime for discrimination purposes, on the ground of race, religion, and ethnic origin”; and Article 604-ter (Aggravating circumstance[[3]](#footnote-3)).

13. Moreover, the Italian Parliament implements the EU Framework Decision 2008/913/JHA through:

* Act No.115/2016 (amending Article 3 of Act No.654/1975 and, adding the section 3bis), by which the crime of the “Holocaust denial” has been introduced.
* Act No.167/2017 (amending section 3bis of Article 3 of Act No.654/1975), which introduces the sentence: « (…) on grossly trivializing or condoning» after the words: «are based, in whole or in part, on denying».

14. In terms of **good practices** as a way of examples, mention may be made of the following:

15. **From an institutional standpoint**, the National Office against Racial Discrimination (UNAR) has been strengthened and its role expanded.

16. Moreover, the Observatory for Security Against Acts of Discrimination (OSCAD) was established in 2010, at the Ministry of Interior.

17. OSCAD is entrusted with: overcoming under-reporting and encouraging the emergence of discriminatory offences; activating relevant Police and *Carabinieri* operations in the field; intensifying exchanges of investigative information; training and exchanging best practices at an international level, also through INTERPOL; monitoring discrimination; raising awareness in synergy with other relevant agencies; promoting communication and prevention initiatives.

18. As for hate speech, mention may be made, among others, of the National Regulatory Authority on Communications (AGCOM).

19. Among its latest resolutions, it is worth recalling the so-called “Hate speech Regulation” by AGCOM, as published in May 2019. It specifically addresses hate speech. The purpose of this **AGCOM Regulation** is to introduce a legal instrument, which is meant to be complementary to access to justice. It contributes to raise awareness among all the media operators with respect to the need to prevent or not to feed expressions of hatred in the audiovisual media sector, while avoiding excessive limitations on the freedom of expression granted to each individual journalist or person. AGCOM has introduced a "light" sanctioning system through a procedure that ends up with a warning addressed to the media service provider that commits the violation of the above AGCOM regulation[[4]](#footnote-4).

20. As for the **sport sector**, it should be recalled the introduction of a general principle of non-discrimination in the Italian National Olympic Committee (CONI) Code of Conduct in Sports. This states that members, affiliates and other subjects who are under the sports authority should refrain from discriminatory behavior on the ground of race, ethnic or national origin, sex, age, religion, political and philosophical opinions. Many regulations entered in force to prevent racist or discriminatory conducts accordingly.

21. The National Observatory on Sporting Events at the Ministry of the Interior has the task of strengthening prevention measures against violence at football matches. It monitors violence and intolerance during sporting events and produces an annual report; it assesses their level of risk and promotes preventive initiatives in co-operation with associations, representatives of clubs, local authorities, government agencies and sets the rules for clubs to ensure public safety.

22. As for **migrants**, it is worth recalling the Italian humanitarian corridors. Italy is committed through three different channels (humanitarian corridors, resettlement; and humanitarian evacuations from Libya) to facilitate the arrival of particularly vulnerable refugees. Between early 2019 and October 2019, 849 refugees from different countries arrived in Italy with the above three channels.

23. The humanitarian corridors, activated initially, upon the initiative of religious organizations to transfer Syrian refugees from Lebanon to Italy, have now been extended to some African countries: Ethiopia, Sudan, Eritrea, Somalia and Niger.

24. By Budget Law 2019[[5]](#footnote-5), the Fund for direct support for Christian minorities persecuted in crisis areas has been established within the provisions of the Italian Ministry of Foreign Affairs and International Cooperation (MAECI) - with a budget of 2 million Euros for each of the years 2019 and 2020, and 4 million Euros starting from 2021 - aimed at support interventions, to be implemented by civil society organizations and other not-for-profit organizations pursuant to Art.26, paragraph 2, of Act No.125/2014, on “General framework on international cooperation for development”. An annual report has to be prepared accordingly.

25. In the **school sector**, for the new school year a specific advanced course had been envisaged to focus on the so-called discriminatory bullying, referring to “*Repeated acts of abuse/prevarication over time by one or more school-mates, on the ground of ethnicity, belief, sexual orientation, religion, age, gender or disability*". The State Police also introduced a specific App, YOUPOL, through which it is possible to send reports, also anonymously, about bullying cases.

26. Italy is strongly committed **to raising public awareness and ensuring the rembrance of the Holocaust, especially among students and young people**.

27. By Act No.211/2000, the 27th of January is the Day devoted to remember: the Holocaust, the racial laws, the Italian persecution of Jewish citizens; the Italians who suffered from deportation, imprisonment, and death; those who at the time opposed the project of extermination; and those who protected and saved the persecuted.

28. In 2009, the Presidency of the Council of Ministers established the "Coordinating Committee for the Holocaust remembrance celebrations".

29. Every year, the Ministry of Education, in agreement with the Union of Italian Jewish Communities, promotes many educational activities such as the Journey of Remembrance to the extermination camps.

30. Yearly, the President of the Republic celebrates the Holocaust Memorial Day with a solemn ceremony. Events take place also at a local level.

31. Within this framework, the National Office Against Racial Discrimination (UNAR) promotes initiatives aimed at fostering inter-religious dialogue. Since its establishment UNAR has been paying specific attention, in accordance with its mandate, to discrimination on a religious ground, by its monitoring and protection action, including the collection of reports and cases-management through its own Contact Center.

32. In order to strengthen **the activity of prevention and combating discrimination, this Office set up an Observatory in 2016 against Media and Internet Discrimination**. It adopts an interdisciplinary strategy that combines the analysis, monitoring and protection of victims with the study, research and creation of campaigns and initiatives aimed at raising awareness among internet users in the fight against hatred, intolerance, and online violence, including a specific focus on the religiously motivated hate speech.

33. In 2019, as part of the XV edition of the Action Week Against Racism, this Office organized the "Witnesses" conference, with guests who witnessed persecution and discrimination linked to the themes of the Holocaust and Porrajmos.

34. In August 2019, UNAR organized, as part of a project for the promotion of the Roma, Sinti and Caminanti’s culture, a visit to Auschwitz-Birkenau concentration camp, which was attended by high school students and members of the NGOs from the National Forum on Roma, Sinti and Caminanti.

35. During 2019, UNAR participated in the project called “Vox Populi”, to deepen analysis on hate speech, with specific regard to hate speech on religious ground. The constituting "Vox Populi" Observatory, in collaboration with, among others, the Milan Holocaust Memorial Foundation and the Young Muslim Association of Italy will result in a particularly valid awareness-raising and prevention tool besidees combating discriminatory phenomena on social media.

36. In addition, the Italian Government supports also the establishment of cultural centers and museums in the national territory aimed at promoting, on the one hand the knowledge of this sad page of history and the dynamics that have generated it, on the other the disclosure of the Jewish culture, such as the National Museum of Italian Judaism and Shoah (MEIS) established in Ferrara in 2011. Also local authorities are committed in the institution of permanent exhibitions such as for instance the Shoah Museum of Rome, currently under construction.

37. At international level, it is important to mention the **Italian Chairmanship of the International Holocaust Remembrance Alliance –IHRA** (March 2018-March 2019) that was aimed at achieving three main goals: 1) fulfilling institutional responsibilities, starting with the organisation of two Plenary Assemblies (the first in Rome from 28 to 31 May; and the second in Ferrara, from 27 to 29 November 2018) and completing the work initiated by the two previous Chairmanships on the “new IHRA strategy” (aimed at rationalising the organisation’s activities and structure); 2) enhancing the awareness and visibility of the IHRA among policymakers and the wider public (especially through the organisation of two international conferences, respectively on 27 May in Rome, on the theme of racial laws (The racist laws before and after the Shoah, models, practices and heritage), and on 12 November in Milan on hate incitement (The innocent enmemy hate incitement in the contemporary Europe); 3) producing new material to be distributed in Italian schools, to facilitate and improve the quality of education on the Holocaust.

38. As for **building of worship**, the private and public exercise of worship is fully guaranteed by Article 19 of the Italian Constitution. It involves two aspects: the opening of the places of worship (churches, oratories, synagogues, mosques, etc.); and the parallel exercise of the right of assembly, guaranteed by Article 17 of the Italian Constitution.

39. In accordance with the Italian jurisdiction, buildings dedicated to worship, regardless of the ownership, are subject to both the national ordinary law (Presidential Decree No.380/2001, namely the Consolidated Text of the legislative and regulatory provisions in the field of construction) and the regional one, except for the provisions arising from bilateral agreements (*Concordat* and Agreements-*Intese*).

40. The right to establish places of worship belongs to all religious Denominations, regardless of the conclusion of an agreement (*Intesa*) with the Italian state. The possibility for all religious Denominations to obtain the allocation by municipalities of areas dedicated to worship has been often reaffirmed.

41. The right to open places of worship belongs to all religious denominations, regardless of the conclusion of an agreement (*Intesa*) with the Italian state.

42. The possibility for all religious Denominations (without any distinction between Catholic and non-Catholic worship with or without agreement) to obtain the allocation by municipalities of areas dedicated to worship has been reaffirmed more than once by the Constitutional Court.

 - Originally, Royal Decree No.289/1930 ("Rules for the implementation of Act No. 1159/1929 on religious worships admitted to the State and for its coordination with the other laws of the State") made the opening of a "temple or oratory" subject to authorisation, on the proposal of the Minister of the Interior, by decree of the Head of State.

 - The Constitutional Court, by verdict No.59/1958, declared the constitutional illegitimacy of the provision contained in Article 1 of Royal Decree No. 289.

 - Accordingly, there are no longer ifferences in treatment between religious denominations. The possibility for all religious denominations (without any distinction between Catholic and non-Catholic worship, with or without agreement), to obtain the allocation by Municipalities of areas dedicated to worship has been reaffirmed more than once by the Constitutional Court.

43. Moreover, the Italian law allows the State to use its resources for urban development, in order to facilitate the construction and implementation of places of worship. In accordance with Constitutional Court decision No.195/1993, the religious Denominations without *Intesa* cannot be excluded from the funding devoted to this aim because it would be a violation of the principle of equality of the religious Denominations.

44. In the above cases, for the admission to these benefits, it is necessary that the specific nature of the religious Denomination results from any other previous public recognition, and from its Statute, as well as from the common understanding. The allocation of public funds provided for by law for the building of places of worship remains subject only to the dimension and social impact of the applicant's Denomination and to its acceptance of the requirements for its use.

**To conclude**, Italian Authorities take this opportunity to reiterate their firm willingness to continue cooperating fully with UN Special Procedures and other relevant UN Mechanisms.

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)
2. Victims-related legislation -Legislative Decree No.212/2015 implements 2012/29/EU Directive establishing minimum standards on the rights, support and protection of victims of crime, while replacing Council Framework Decision 2001/220/JHA. [↑](#footnote-ref-2)
3. The former repealed Article 3 of Act No.654/1975; the latter repealed Article 3 of Act No.205/1993 (Mancino aggravating circumstance). [↑](#footnote-ref-3)
4. In the event of non-compliance with the preliminary warning, a pecuniary sanction may be imposed only upon the media service provider, and not upon journalists. If the violation involves journalists, they may only be subject to discipline flags by the Italian Journalists Organisation (Ordine dei giornalisti), which has the right to be heard and participate in the AGCOM proceeding. The regulation aims also at promoting co-regulation procedures, the adoption by on line video-sharing platforms, of measures to counter the dissemination of hateful content on the internet, and in particular on social media, and measures for the removal of hateful content. It must be observed also that, taking into account the primary purpose of the Regulation, which is to counter violations of fundamental rights perpetrated through the publication of hate content, this tool is also an active means of protection for journalists who are increasingly the victims of threats and verbal attacks carried out with expressions of hatred on the media, especially online platforms and social networks. [↑](#footnote-ref-4)
5. (Article 1, paragraphs 287 and 288 of Law No. 145 of 30 December 2018). [↑](#footnote-ref-5)