

ITALY



MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION
Inter-ministerial Committee for Human Rights

Italy's Contribution
On Women and Freedom of Expression

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To the attention of freedex@ohchr.org

Italy is in a position to provide the following contribution, **for your information only**.

The Italian (rigid) 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, including gender 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.

- In particular Article 1, para.1, sets forth as follows: *“Italy is a democratic Republic founded on labor¹”*.
- Art. 3 stipulates, 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.*^[1] *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.*
- Art. 21 sets out: *Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication.*

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.^[1]

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

¹ The Italian Constitution in English is available at the following link: https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

supreme court).² 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

As earlier mentioned, the Italian Constitution (1948), coeval with the Universal Declaration of Human Rights, protects freedom of expression and freedom of the press under Article 21, which sets forth: “*Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication. The press may not be subjected to any authorisation or censorship [...]*”.

In line with the constitutional principles of the rights to freedom of opinion and expression, including press freedom and pluralism (Art.21), the widest variety of information and views and the independence of the media are effectively guaranteed. There are no restrictions on access to internet or to create blogs - which have become, over the years, an important source of information.

Against this background it is to be noted the Italian Digital Agenda and the Strategy for Digital Growth, 2014 – 2020. Data with regard to regular internet usage indicates the use of Internet for the 99% of youngsters, aged 18-19. This is a figure decreasing up to 10% for those aged 75 and more. We therefore adopted the Italian Digital Agenda in line with the EU Strategy 2020. In this context, of relevance is *Agenzia per l'Italia Digitale*, under which the National Action Plan for ICT in the Public Administration, 2017 – 2019, as a strategic and economic policy document for all Public Administrations, oversees the digital transformation of the country. This Plan defines *inter alia*: The operational course of action in the development of public information technology; and ICT investments in the public sector according to the European and Governmental guidelines.

As for the protection of men and women journalists, it is to be considered that at the Ministry of the Interior-Department of Public Safety, the Central Bureau of Inter-Forces for Personal Security

² 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.

(acronym in Italian, UCIS) provides guidance to ensure that the most appropriate protection measures be implemented with regard to domestic and foreign dignitaries, as well as for those persons, including their relatives, who, for their duties or for other proven reasons, are exposed to potential or actual danger or threat (Article 1, Act No.133/2002). Such a situation usually – and this must be stressed – mainly concerns those journalists investigating organized crime.

The UCIS, jointly with the competent *Prefects*, determines the level of risk in light of the degree of exposure to danger (levels from 1 to 4, in descending order of danger), in accordance with Ministerial Decree dated 28.5.2003. Measures range from providing the person concerned with an armored car to a round-the-clock police escort. Moreover the Ministry of Interior established in December 2017, the "Coordination Center for monitoring, analysis and permanent exchange of information on the phenomenon of intimidating acts against journalists". This is the first initiative of this type in Europe. Given the multi-stakeholder approach and the use of territorial divisions, the Coordination Center can be immediately operational in cases of threat by evaluating the individual episodes and arranging the appropriate protection measures to protect journalists and to guarantee the right of citizens to be informed.

- As of April 2021, 23 journalists, including women, were under UCIS security measures - in addition to 198 surveillances carried out by the relevant Police forces.

Moreover, AGCOM (The National Regulatory Authority on Communications), in collaboration with NGOs, such as *Ossigeno per l'Informazione*, defined and classified the threats to journalists, for comparable data. It also identified a new detection methodology, for both the emerged and the submerged phenomena.

As for the role of AGCOM, this is an independent and “convergent” regulatory Authority covering all segments of the communications sector in Italy. Mostly, AGCOM is in charge of regulation and competition enforcement under the EU Regulatory framework of electronic communications, news-media pluralism, media concentration and market monitoring, including online, audio-visual media content regulation and surveillance, online copyright protection, regulation of scarce resources (radio-spectrum and numbering), regulation and surveillance of the competition and consumer protection conditions in the postal services sector.

On top of its traditional functions, AGCOM promotes voluntary commitments by online platforms in the online news-media system (e.g. search engines, social networks) aimed at tackling disinformation. Furthermore, AGCOM monitors the news system. In 2014, AGCOM established an Observatory on Journalism within which, starting from 2016, a specific focus is devoted to the intimidation of journalists, a threat to the fundamental right to information. In May 2019, AGCOM adopted specific “Regulation” against hate speech. In 2017, AGCOM established a self-regulatory body, called “Roundtable to guarantee pluralism and correct information on digital platforms”, aimed at promoting self-regulation and co-regulation among its members, which include online advertisers, press publishers, traditional media companies and digital platforms. This initiative anticipated commitments and guidelines by online platforms in the context of political elections. AGCOM designed the methodology of a new monitoring system of online disinformation (fake news).

As for women’s relevant participation, in addition to the above-mentioned Article 3 of the Italian Constitution, Art.1 of the Code on Equal Opportunities Between Women and Men (Legislative

Decree 198/2006)³ sets forth: “*Relevant provisions envisage measures, aimed at eliminating whatsoever distinction, exclusion or limitation based on sex, which might affect or hinder the enjoyment and exercise of human rights and fundamental freedoms (...)*” in all spheres of life.

Act No.120/2011, also called (Golfo-Mosca Law) mandates increased representation of females on boards of publicly-listed and state-owned companies. It requires that boards (executives and non-executives) of publicly-listed companies and state-owned companies have at least 33% of either gender by 2015 and sets a target of 20% for the transitional period. In the event of non-compliance, a progressive warning system can culminate in the eventual dissolution of the board.

A further significant step towards the achievement of women’s full participation in the national institutional life is the adoption of Law No. 215/2012 establishing “Provisions to promote gender balance in local governments’ and regional councils. Provisions on equal opportunities in the composition of selection boards for competitions in the public administrations”.

By Act 215/2012, establishing “Provisions to promote gender balance in local governments and regional councils. Provisions on equal opportunities in the composition of selection boards for competitions in the public administrations”, municipal statutes shall include provisions to ensure equal opportunities between women and men within councils and non-elective collective bodies of municipalities and provinces, as well as of agencies, businesses and institutions depending from them. At the electoral level, for Municipalities with less than 5,000 inhabitants, to be valid, candidates’ lists must include both sexes. For the Municipalities between 5,000-15,000 inhabitants, in addition to the above quota — by which none of the two sexes can exceed of 2/3 the other one — the gender preference has been added.

As for the selection boards to positions in Public Administration, at least 1/3 is reserved to women. The same purpose is under Act 65/2014 on the election to the EU Parliament: from 2019, women must represent 50 per cent of the candidates’ list. Plus, the first two candidates of each list have to be of different sexes. In the event of two or more preferences by the voter, they are valid only if reflecting the gender balance principle.

On the occasion of last consideration of Italy before CEDAW Committee (July 2017), we recalled, as a way of examples, that Women in RAI - the Italian public broadcasting system - were 5.133 out of 12.312 workers, with almost equal rates of women and men among journalists and managers. The process to increase women’s participation in all decision-making and political processes, as well as in leading positions is on-going.

Conclusion

Italian Authorities take this opportunity to reiterate their firm commitment to working effectively with UNSPMHs. Once additional information is made available, we will promptly share it.

³ See also Arts. 37, 51, 117 Cost.