



*The Permanent Representative of Italy  
to the International Organizations  
Geneva*

1272

Geneva, 9 JUL. 2019

Dear Ms. Balbin,

Following UN Letter, dated October 19, 2018, I have the honour to submit Italy's reply to the Joint Communication by six UN Special Procedures that have requested Italian Authorities to provide them with information about incitement to hatred and the use in political discourse (AL ITA 4/2018).

In this regard, I would like to recall my letter, dated June 6, 2019, sent in my capacity as Permanent Representative of Italy to the United Nations and other International Organizations in Geneva, to the attention of H.E. High Commissioner for Human Rights, Ms. Michelle Bachelet. Along these lines, I would like to draw your attention to the Concluding Remarks contained in the reply of Italian Government, as attached to the present letter.

Please accept, Ms. Balbin, the assurances of my highest consideration.

Sincerely yours,

  
Gian Lorenzo Cornado

-----  
To Ms. Beatriz Balbin  
Chief  
Special Procedures Branch  
Palais des Nations  
1211 Geneva

**ITALY**



***MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION***

***INTER-MINISTERIAL COMMITTEE FOR HUMAN RIGHTS***

**ITALY'S REMARKS,  
IN RESPONSE TO THE JOINT COMMUNICATION (AL ITA 4/2018)  
FROM SIX UN SPECIAL PROCEDURES**

*July, 2019*

## ITALY'S REMARKS

Further to letter, dated October 19, 2018 (AL ITA4/2018), sent by six UN Special Procedures (Working Group of Experts on People of African Descent; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the human rights of migrants; Special Rapporteur on minority issues; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression), Italian Authorities are in a position to provide the following information, together with meaningful concluding remarks:

### Introductory remarks

1. 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, 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, such as freedom of correspondence, freedom of movement, freedom of religion or belief, and freedom of opinion and expression.

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.

3. Within our national 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<sup>1</sup>.

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

---

<sup>1</sup> 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.

decisions cannot be appealed) 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, this Court decides on the validity of legislation, its interpretation and if 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 issues at stake**

5. The basic rule guiding modern democracies in the protection of human rights is the effective implementation of the principles of equality and non-discrimination. It is, indeed, one of the main pillars of our constitutional code, upon which the domestic legislative system is based: *“All citizens have equal social status and are equal before the law, regardless of sex, race, language, religion, political opinion, and personal or social conditions. It is the duty of the republic to remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organization of the country (Article 3)”*.

6. By recalling the Common Core Document of Italy forming part of reports to Treaty Bodies (UN Doc. HRI/CORE/ITA/2016, dated July 25, 2016), it is worthy of mention, inter alia, Legislative Decrees No. 215-216/2003, by which Italy established UNAR (National Office Against Racial Discrimination) and transposed Directives 2000/43/EU and 2000/78/EU, with the aim of prohibiting all forms of discrimination based on race or ethnic origin, in any area or sector, both private and public; and regulating the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation, with regard to employment and occupation.

- More specifically, the definition of both direct and indirect discrimination conforms to the ones contained in Directive 2000/43/EU. The definition of harassment refers to a complex group of behaviours perpetrated to violate the personal dignity, to create an intimidating hostile degrading offensive and humiliating climate. So it is a particular type of racial discrimination, which is not committed on the ground of unequal treatment (for example by measures which regulate a certain type of access to employment or to allocation of housing), but it is performed in all those explicitly xenophobic behaviours that violate the personal dignity.<sup>2</sup>

7. The Italian legal system also includes specific provisions to combat racism, racist and xenophobic speech, and all 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.

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

---

<sup>2</sup>[http://ec.europa.eu/justice/discrimination/files/antidiscrimination\\_training\\_italy\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/antidiscrimination_training_italy_en.pdf).

9. In accordance with Article 112 of the Constitution, prosecutors are mandated to investigate any alleged discriminatory motive associated with a crime, irrespective of its mention in the report by Police authorities. From a judicial standpoint, with due respect to and given the judicial safeguards set forth by the Italian Constitution and relevant legislation, should new events emerge the Court can admit additional evidence in accordance with Articles 516, 517, 518 of the code of criminal procedure. In general terms, the Court can always decide a more severe penalty in light of new circumstances or specific evidence. Should the Court find new facts – compared to those already under trial –, this has to mandate the public attorney to proceed separately, unless the attorney and the defendant decide to do otherwise (Article 518).
10. Of relevance is also Legislative Decree No. 212/2015, which introduced a specific procedural provision (Article 90 quarter of the code of criminal procedure) devoted to the situation of specific vulnerability.
11. As for the use of racist or xenophobic language in politics, by law it is laid down that the judicial authorities are entrusted and have to verify the existence of criminal contents in documents, speeches and programs made by political representatives.
12. In terms of good / best practices, mention may be made in particular of OSCAD and the Coordination Centre to monitor, analyze and exchange information on the phenomenon of intimidation against journalists.

### **OSCAD**

- i)** The Observatory for security against acts of discrimination (OSCAD) was established, within the Ministry of Interior – Department of Public Security – Central Directorate of Criminal Police, in late 2010, with the aim of improving the action of the Italian Police agencies (in particular National Police – “*Polizia di Stato*” and Carabinieri Corps – “*Arma dei Carabinieri*”) in preventing and combating hate crime.
- ii)** In order to address under-reporting (and taking into account that the Italian legislative framework does not allow either “third party reporting” or online/anonymous reports), an email address (oscad@dcpc.interno.it) was established in order to receive ‘informal’ reports from victims, witnesses, and NGOs. OSCAD’s experts analyze those reports and, when appropriate, initiate targeted interventions at a local level, to be carried out by Police or Carabinieri Corps. In particular, when a victim/NGO contacts OSCAD highlighting their willingness to officially report a case of hate crime to law enforcement, in order to facilitate their approach to Police agencies, OSCAD contacts the Chief of the competent station/unit underlining the specificities of the case so that this will be dealt with by the most competent officer.

### **Coordination Center**

The Coordination Center, the inception of which dates back to December 6, 2017 (<http://www.interno.gov.it/it/notizie/operativo-viminale-centro-coordinamento-contro-intimidazioni-giornalisti>), has been set up to monitor, analyze and exchange information on the phenomenon of intimidation against journalists. It consists of Ministry of Interior, National Press Federation, National Journalists Association, and Department of Public Security-Ministry of Interior.

13. Additional information on the relevant protection system is reported in the above-mentioned Common Core Document of Italy forming part of reports to Treaty Bodies. As for information on

both Roma-related policies and hate crimes including overall data, please kindly refer to information contained in Italy's recent remarks to Joint Communication AL ITA 3/2019.

14. Last, the National Authority on Communications adopted, on May 15, 2019, a specific regulation (Resolution No. 157/19/CONS), on "Provisions concerning respect for human dignity and the principle of non-discrimination and fight against hate speech", which – in a nutshell – requires publishers, social media, etc., to avoid or delete hatred-related expressions / manifestations, inciting to violence and intolerance.

### **Concluding remarks**

By recalling the extremely comprehensive domestic system of checks and balances as well as of guarantees and safeguards set forth by the Italian (rigid) Constitution earlier mentioned, we express the utmost astonishment for the language contained in the letter under reference, which seems not only to ignore such framework (as illustrated in the Common Core Document of Italy) but it goes so far to see even questioning the democratic coherence of the whole legal system of Italy.

For these reasons, we deem it necessary to recall and reiterate what the Permanent Representative of Italy to the UN and other International Organizations in Geneva, H.E. Ambassador Cornado, wrote in his letter, dated June 6, 2019, to H.E. Ms. Bachelet, UN High Commissioner for Human Rights. The remarks that were expressed in such letter are even more necessary in the context of the present reply. Namely and firstly, the Special Procedures must abide by the fullest impartiality. We regret to note that this is not the case with the letter under reference and we firmly believe that a behavior inspired by the utmost professional and highly ethical rigor is indispensable for the fulfillment of the mandate of the Special Procedures. Certain aspects of their attitude, in relation with their above-mentioned letter appear to be questionable and a serious infringement of the mutual trust.

Furthermore, this unjustified approach is fuelling a fired political debate on the merits of Italy's (the seventh's largest contributor to the UN regular and Peacekeeping budgets) longstanding record of unwavering commitment to the whole UN System, and notably to the Human Rights Council, and to OHCHR's structures and programs.

In the light of the above, we reiterate the remarks made by Permanent Representative of Italy to the United Nations and other International Organizations in Geneva, in the above-mentioned letter, and particularly that we deem it necessary an in-depth assessment of the methods and criteria for the selection and appointment of the persons in charge of the Special Procedures (article 39, Resolution A/HRC/RES/5/1), especially in terms of specific highly qualified professional curriculum and full guarantee of impartiality. The assessment shall also specify any payment and/or reimbursement granted to the persons in charge of the Special Procedures. The aim of the assessment is to grant more transparency to their activity and to enhance their independence beyond any reasonable doubt; thus being more adherent to their mandate as established by the said Resolution and Code of Conduct.

We are therefore certain that you will take into due consideration the above remarks.