

ITALY

**MINISTRY OF FOREIGN AFFAIRS**  
*Inter-ministerial Committee for Human Rights*  
*Comitato Interministeriale per i Diritti Umani*

**ITALY'S REMARKS  
ON FREEDOM OF OPINION AND EXPRESSION AND  
THE SITUATION OF JOURNALISTS**

*June 10, 2016*

## ITALY'S REMARKS

### Introductory remarks

1. The Basic Law 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 (Arts. 2 and 5); the importance of work, as a central value of the Italian community (Arts. 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 – as also mentioned in your report.

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 (the constitutional court consists of fifteen judges; one-third being appointed by the President of the Republic/Head of State, one-third by the Parliament in joint session, and one-third by ordinary and administrative supreme court). 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) 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.

14. As for the Bill on wire-tapping material, it is now pending before the Senate for examination.

## **CONCLUSIONS**

17. Before concluding, Italian Authorities take this opportunity to reiterate their firm willingness to continue cooperating with the Council of Europe and all its mechanisms.