**ITALY**

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

*Inter-ministerial Committee for Human Rights*

*Comitato Interministeriale per i Diritti Umani*

**ITALY’S CONTRIBUTION,**

**IN LIGHT OF UN HUMAN RIGHTS COUNCIL RESOLUTION 35/11**

**(A/HRC/RES/35/11)**

*May 16th, 2018*

**ITALY’S CONTRIBUTION**

*To the attention of*

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Following your query, we are in a position to provide the following information:

**Introduction**

1. The 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.

**Q.1.**

3. Article 24 of Italian Constitution envisages the right of defence[[1]](#footnote-1), including *inter alia* the protection of the legal profession, as also enshrined in the new ad hoc Act No.247/2012[[2]](#footnote-2). Relevant EU Directives supplement the above Act and all regulations being issued by **Italy’s National Bar Council (acronym in Italian, CNF**).

4. CNF is the national Association representing the legal profession, the members of which are elected by local and territorial associations.

5. Lawyers’ work predominantly consists of: defence before courts; participation in arbitrations and conciliation under ADR; advisory services, including opinions: “The lawyer has the task of ensuring citizens the effectiveness of rights’ protection (Article 2 of Act 247/2012)”.

6. The above Act indicates that the legal profession shall be practised “with independence, loyalty, integrity, dignity, competence and care, by taking into account the social relevance of the defence and respecting the principles of fair and loyal competition (Article 3, para.2)”.

7. In particular, Act No. 247/2012 envisages *inter alia*: the organization of professional firms, through associations or companies; professional secrecy; the solemn commitment and oath; insurance; registers and rolls; the bodies and functions of rolls; incompatibilities; gender equality; duties and powers of the National Bar Council (CNF); the permanent Observatory on the exercise of jurisdiction; permanent professional training and relations with Universities, Legal Specialized Schools; access to the profession; disciplinary proceedings and the district disciplinary Boards. Moreover, this Act envisages the new practitioners’ training pathway[[3]](#footnote-3).

**Q.2**

8. The National Bar Council (acronym in Italian, CNF)[[4]](#footnote-4) is the top Institution representing lawyers in Italy. The same form applies in most other EU countries.

9. Act No. 247/2012 confirms the central role of the Italian CNF in the organization of the legal profession, which has been always exercised in full awareness of the social responsibility of the lawyers as a safeguard for the protection of human rights - and in constant and fruitful collaboration with the Government and the judiciary.

10. Article 34 of the new legal professions legislation (Act No. 247/2012) intervenes on the composition and modalities of the CNF, changing its physiognomy in order to ensure higher representativeness at the districts of the Courts of Appeal level.

11. Equally important, with regard to the composition of the CNF, is the introduction of the principle of gender equality.

12. Article 34 increases the term of office of the National Bar Council from two to four years, in line with the provisions applying to local Bar Councils. The National Bar Council elects its President, two Vice-Presidents, a Secretary and a Treasurer, who form the Presidency’s Council. It also appoints the members of the commissions and other bodies as required by law (Article 35, paragraph 1, letter b).

13. The new legal professionals Law reserves to the National Bar Council, the institutional representation of the category. CNF is responsible for promoting relations with competent Institutions and public administrations (Article 35, paragraph 1).

**Q.3**

14. In this context (by recalling that Act No. 247/2012 confirms the central role of the Italian CNF in the organization of the legal profession, which has been always exercised in full awareness of the social responsibility of the lawyers as a safeguard for the protection of human rights - and in constant and fruitful collaboration with the Government and the judiciary), mention has to be made of the strong collaboration between the National Bar Council and the Ministry of Justice, to which the above Act dedicates various provisions.

- Mention has to be made of the important general provision (Article 35, paragraph 1, letter q), which envisages that the CNF "expresses, upon request by the Minister of Justice, opinions on draft pieces of legislation which, even indirectly, concern the legal profession and the administration of justice".

15. With regard to relations with the judiciary and, more generally, the fundamental function that lawyers play in the administration of justice, it is of high relevance the establishment, at the CNF, of the Permanent Observatory on Jurisdiction (Article 35, paragraph 1, letter r) that "collects data and elaborates studies and proposals, aimed at favouring a more efficient administration of justice".

**Q.4**

16. In addition to the advisory function vis-à-vis the Minister, significant areas of the implementation of Act No. 247 are to be directly implemented by CNF. It carries out these tasks in accordance with its own regulatory autonomy.

17. Of specific relevance are the provisions concerning: the disciplinary function (Article 50); permanent education; and the establishment of the above-mentioned Permanent Observatory on Jurisdiction (Article 35).

18. As far as relations with the local associations/Orders are concerned, it is worthy of note that Article 35, paragraph 1, letter f, expressly assigns to the CNF, the function of promoting "coordination and guidance vis-à-vis local Bar Councils in order to make the conditions for exercising the profession and access to it homogeneous”.

19. The other fundamental function of the CNF relates to the disciplinary sector. CNF exercises this specific function in a jurisdictional approach, as confirmed by the new legislation (Articles 36 and 37). Through its decisions, the National Bar Council contributes meaningfully to ensuring the correctness of the legal professional activity. The CNF judges above all on the complaints filed against the disciplinary measures adopted (in an administrative form) by the local Bar Councils, as well as on disputes concerning the election to the local Bar Councils.

- The special jurisdiction of the CNF has been preserved with the entry into force of the Constitution, following the "review" of the special jurisdictions in accordance with Art.102 of the Basic Law and the VI transitional provision of the latter. The disciplinary function is key to keeping together the protection of the public interest in the correct exercise of the profession and the autonomy of the professional organization.

20. From the jurisdictional nature of the decisions by the National Bar Council originates the legitimacy of this Council to formulate ethical rules, including the new code of ethics, which indicates the behaviours besides legally qualifying the specific morality required to the lawyer in the exercise of his/her functions and in his/her social conduct (Articles 3 and 35, paragraph 1, letter d).

- The new ethical code (Annex No. 2) consists of 73 Articles and seven Titles: the first (Articles 1-22) refers to the general principles; the second (Articles 23-37) focuses on relations with the client/beneficiary; the third (Articles 38-45) deals with relations with colleagues; the fourth (Articles 46-62) relates to lawyers’ duties during trial; the fifth (Articles 63-68) refers to relations with third parties and counterparts; the sixth (Articles 69-72) focuses on relations with legal and other relevant Institutions; and the last Title (Article 73) includes final rules.

* The first Title is devoted to the General principles, including the principle of independence, autonomy and fair competition; the principle of care (quality of service) and competence, refresher and permanent education; the duty to comply with any tax, social security, insurance and contributory obligation.

21. Title V of Act No. 247/2012 deals with the new disciplinary proceedings, which include the establishment of "*district disciplinary Board*". Among relevant rules, with a view to ensuring the fullest impartiality, the judging board cannot include members registered in the same roll or association of the accused person (Article 50, paragraph 3). The adversarial system fully applies.

22. To these fundamental pillars are to be added numerous other functions, which are of relevance in different fields of interest for the legal profession, such as the management of the Register of lawyers authorized to practice before the higher Courts (the so-called "Lawyers *cassationists*").

23. With legislation on the free movement of lawyers in the European Union, the CNF has become the venue to take supplementary examinations for the practice as legal professional in Italy by lawyers with qualifications taken in another Member State.

24. It is also to be added the vast sector of designations of lawyers with documented professional expertise, for a wide range of positions.

- A first attribution, which has a specific constitutional reference in Art.106 of the Basic Law, is the determination of candidatures that are to be transmitted to the Superior Council of Magistracy (acronym in Italian, CSM), for the purposes of appointing to the Court of Cassation, those members who fall within the legal profession quota.

25. With the reform of the judicial system 2005-2006, the following noteworthy competences have been also added: the President of the CNF is a member by law of the Board of the Court of Cassation; furthermore, it is up to the National Bar Council, to appoint another member of the same body.

26. The CNF participates in all the International Organizations for lawyers (CCBE-UIA): it has opened an office in Brussels; and maintains contacts with lawyers all over the world.

- Its representatives are present in the most important Italian and foreign law commissions.

27. In terms of promotional activities, it publishes the quarterly magazine of culture and doctrine, entitled Bar Review (*Rassegna Forense*) and the bi-monthly Magazine, entitled Bar News (*Attualità Forensi).* In general terms, the CNF gives birth to publishing initiatives, such as *Quaderni della Rassegna Forense* and the series *Professione e Diritto.*

28. In terms of annual activities, a full calendar of events is available online[[5]](#footnote-5). However as a way of examples, mention may be made of the following:

* The work of the National Fund for Victims of Discrimination established at the National Bar Council by the Department for Equal Opportunities in November 2014.
* The work within the International Observatory for Lawyers in Danger (in French, OIAD[[6]](#footnote-6) – *Observatoire international des avocats en danger).*
* The organization, with the International Siracusa Institute of Human Rights, of the training, entitled S*iracusa Institute’s International Defence Counsel Training Programme*.
* Under the Italian Presidency of the G-7, it hosted *inter alia* a Conference for the legal professionals from the G-7 countries, on “Security and Hate Speech. Protection of the Person and Protection of Personal Data. The Rights in the Social Media Era”, which took into account fully UN SDGs and UN 2030 Agenda[[7]](#footnote-7).

29. In terms of MoUs signed in 2017, as a way of examples, mention can be made, among others, of the following (chronological order)[[8]](#footnote-8):

* MoU between the CNF and *Nessuno Tocchi Caino* NGO;
* **MoU between the CNF and the National Equality Councillor;**
* **MoU between the CNF and the Judiciary Superior Council;**
* MoU with the National Authority on Children’s Rights;
* MoU with Bruno Kessler Foundation;
* MoU with the National Preventive Mechanism of Italy;
* MoU with the Constitutional Court.

**Q.5**

30. Estimates indicate that as of January 2017, lawyers in Italy were about 300,000. Italy thus results to be the third country in Europe in terms of the number of lawyers per inhabitants, on average.

31. Article 16 of the new Law for the legal profession (Act No.247/2012) delegates the Government, to re-organize legal aid (*difesa d’ufficio*). This institute represents, in the highest expression, the social responsibility of the Lawyers. Lawyers available for legal aid as of 31.12.2017 were 21.958.

32. As for the free legal aid institute, it should be recalled that in accordance with relevant constitutional provisions, the party concerned can choose a lawyer of his/her own choice among those ones registered in the lists of lawyers for free legal aid held at each District Bar Council of the competent Court of Appeal and, in the cases provided for by law, can appoint a technical consultant and an authorized private investigator (Presidential Decree No. 115/2002)[[9]](#footnote-9).

**CONCLUSIONS**

Italian Authorities take this opportunity to reiterate their firm willingness to continue cooperating fully with all UN Special Procedures[[10]](#footnote-10).

1. “*Anyone may bring cases before a court of law in order to protect their rights under civil and administrative law. Defence is an inviolable right at every stage and instance of legal proceedings. The indigents are entitled by law to proper means for action or defence in all courts. The law shall define the conditions and forms of reparation in case of judicial errors*”. [↑](#footnote-ref-1)
2. Generally speaking, professionals who pass the State exam and qualify them for practicing that given profession, are registered with an “*Ordine* (Roll, local associations)”, a not-for-profit public body with organizational autonomy, and coordination from the respective “*Consiglio Nazionale* (National Council)”. [↑](#footnote-ref-2)
3. Please refer to Annex No.1 on legal practice and how to become a lawyer in Italy. [↑](#footnote-ref-3)
4. [www.consiglionazionaleforense.it](http://www.consiglionazionaleforense.it) [↑](#footnote-ref-4)
5. See http://www.consiglionazionaleforense.it/documents/20182/417840/01-RESOCONTO+ATTIVITA+CNF+2017.pdf/938a24e8-d517-4ae7-9ed3-a5b24a8ff07e [↑](#footnote-ref-5)
6. See http://www.consiglionazionaleforense.it/documents/20182/234579/Statuto+OIAD/32893ef5-2ba4-4bbf-8a80-774283ef55d2 [↑](#footnote-ref-6)
7. Along these lines, many HR-related activities and initiatives are carried out at a local level, too. As a way of examples, mention has to the be made of the first itinerant Forum on Human Rights, launched in Naples by the human rights committee of the Naples Bar Council in early January 2017. The same body also facilitated the establishment of the so-called Observatory on Poverty, a free legal orientation desk, launched in late 2016/early 2017, for vulnerable people (<https://www.coanapoli.it/pam/evento/osservatorio-giuridico-di-ascolto-e-di-orientamento-sui-diritti-sociali/>). [↑](#footnote-ref-7)
8. See http://www.consiglionazionaleforense.it/web/cnf/relazioni-inaugurali [↑](#footnote-ref-8)
9. See www.giustizia.it [↑](#footnote-ref-9)
10. 2,467 words. [↑](#footnote-ref-10)