

Italian Yearbook of Human Rights 2014



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UPR: Towards the Second Cycle of the Universal Periodic Review

How is Italy preparing for its second Universal Periodic Review before the United Nations Human Rights Council (October 2014)? To what degree have the recommendations received during the first Universal Periodic Review (2010) been implemented? These questions persuaded the members of the Yearbook's research and editorial committee to prepare an analysis, presented in the coming pages and based on the contents of the *2014 Yearbook* and the three previous editions (2011, 2012 e 2013), of the status of implementation of the recommendations made to Italy in 2010. This analysis is further backed by the information contained in the reports adopted, over the same period, by international bodies (the United Nations, the Council of Europe, the European Union and the OSCE) and civil society organisations (particularly Upr.info, Amnesty International, Human Rights Watch and the Comitato per la promozione e protezione dei diritti umani – Italian Committee for the Promotion and Protection of Human Rights).

In the course of the first Universal Periodic Review, Italy received 92 recommendations, relative to 19 thematic areas, from 51 different Countries (doc. A/HRC/14/4). The overwhelming majority of these recommendations (83%) belong to 8 thematic areas:

1. *the rights of migrants, refugees and asylum-seekers* (recommendations Nos. 9–10 and 67–82): within this area, the most recurrent recommendations request Italy to rethink its policy of criminalising irregular migrants and the push-back policies implemented in the Mediterranean;

2. *racial discrimination* (recommendations Nos. 18–33): particular concern is expressed over the increase in the number of cases of discrimination reported by the UNAR, with particular reference to the increased number of public speeches inciting racial hatred;

3. *the rights of national minorities* (recommendations Nos. 56–66), with particular reference to the need to improve the conditions of the Roma, Sinti and travellers communities;

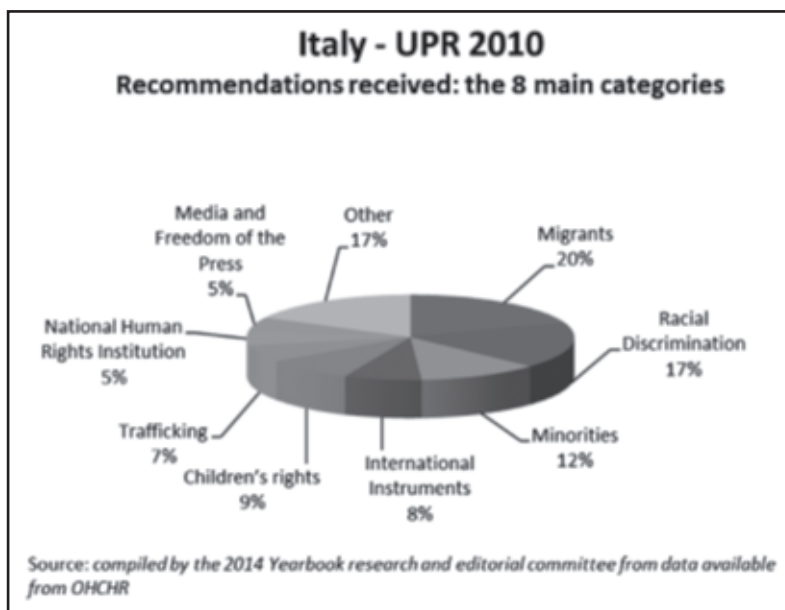
4. *ratification of international instruments* (recommendations Nos. 1–7): Italy is specifically requested to ratify the United Nations Convention on the Rights of Migrant Workers, the International Convention for the Protection of All Persons from Enforced Disappearances and the Optional Protocol to the Convention against Torture;

5. *the rights of children* (recommendations Nos. 37–44): the recommendations are above all on the need to combat the phenomenon of violence against and ill-treatment of children, and the need to establish mechanisms to enshrine their right to be heard in court and/or administrative proceedings which concern them directly;

6. *trafficking in human beings* (recommendations Nos. 83–88): Italy has been invited to redouble previous efforts to stamp out human trafficking, offer adequate protection to victims, particularly women and children, and to prosecute traffickers;

7. *lack of human rights structures at the national level* (recommendations Nos. 11–15): Italy should correct this structural shortcoming in the shortest possible time by creating an independent national human rights institution in line with the Paris Principles;

8. *Independence of the media and freedom of the press* (recommendations Nos. 50–54): the Human Rights Council invites Italy to implement suitable measures to enhance the independence of the information system and protect freedom of the press, with particular reference to the protection of journalists from attack by organised criminal groups.



Other equally serious, albeit less frequent, recommendations highlight shortcomings and critical issues in the national system for protecting human rights, such as, for example, the fact that the crime of torture is not

envisaged in the Italian legal order, overcrowding in prisons, the spreading of the scourge of violence against women.

Of the 92 recommendations received, Italy accepted 80, therefore committing to their implementation within four years, and rejected 12 of them. Included in the latter group are the recommendations on the need to: introduce torture as a specific crime in the Italian criminal code; abrogate the laws which criminalise irregular immigration; ratify the United Nations Convention on the Rights of Migrant Workers (for a more detailed illustration of these recommendations, see *2011 Yearbook*, pp. 169–173). Italy's commitment to implementing the recommendations it accepted was moreover reconfirmed in 2011, when the Italian Government presented its candidature for election to the United Nations Human Rights Council: thanks in part to this commitment, Italy was indeed elected for the three-year period June 2011-June 2014.

On the basis of data collected in the 2011–2014 Yearbooks, it is apparent that as of May 2014, Italy had only fully implemented 14% of the recommendations accepted¹. Specifically, Italy has: ratified the Optional Protocol to the Convention against Torture, committing to introducing the required domestic preventive measure and ratified the Council of Europe Convention on Combating Trafficking in Human Beings; drawn up the Third two-year National Action Plan for the Protection of the Rights and Development of Children and Adolescents 2010–2011, the National Strategy for the Inclusion of Roma, Sinti and travellers 2012–2020 and the National Plan against Racism, Xenophobia and Intolerance for the three-year period 2013–2015; strengthened the measures adopted to combat trafficking in human beings and to especially protect women and child victims of trafficking. Recommendation No. 73 is also one of those fully implemented (striking out the aggravating factor connected to the status of irregular immigrants: criminal code art. 61, No. 11-bis) although initially rejected by Italy during the Periodic Review: the Constitutional Court declared this circumstance unconstitutional in judgment No. 249 of 8 July 2010, (see *2011 Yearbook*, pp. 277–278).

28% of the recommendations have been partially implemented, or certain positive actions have been undertaken towards implementing them, but these are still not sufficient to ensure fully achieving the objective established². In effect, some of the recommendations include long-term objectives which require the activation of a complex legislative process

¹ Recommendation Nos. 3, 4, 7, 18, 19, 42, 43, 73, 74, 82–84, 87.

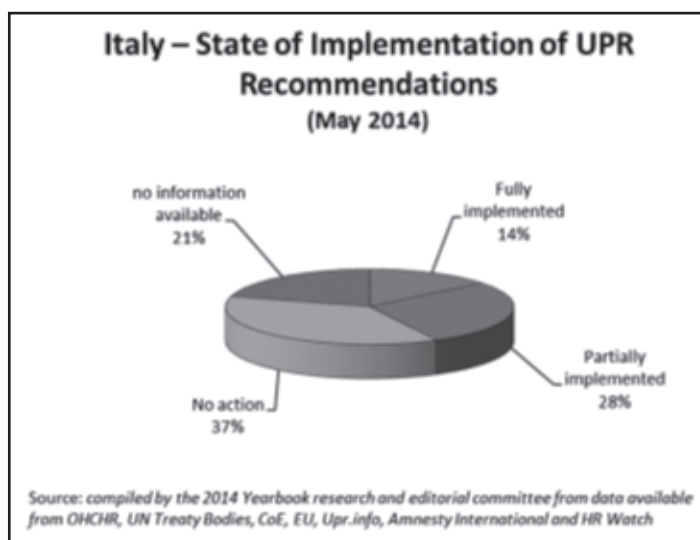
² Recommendation Nos. 6, 11, 15, 20–22, 26, 28–30, 32, 34–36, 40, 45, 46, 57, 62, 67, 72, 75, 80, 85, 86, 88, 89, 92.

or several cycles of public policies, which makes it very difficult to complete them all in a timeframe of only 4 years. Some examples are:

– *recommendations Nos. 21, 22, 26, 28–30, 32*: despite efforts deployed at the national level to combat all forms of racism and racial discrimination, through campaigns and education and awareness-raising initiatives promoted above all by the Department for Equal Opportunities, the Ministry of Labour and Social Policies and the Ministry for Integration, between 2010 and 2012 UNAR recorded an increase of 22% in the number of instances of racial discrimination (see, in this Yearbook, Part II, National Bodies with Jurisdiction over Human Rights, II, A);

– *recommendations Nos. 45–46*: As already mentioned in the focus section above on prison conditions, the Prison Administration Department estimates that between December 2012 and April 2014, the ratio between detainees and number of places available in prison has moved from 1.4 (140 detainees per 100 places) to 1.2 (approximately 120 detainees per 100 places). However, these improvements still appear insufficient to systematically and permanently resolve the serious problem of prison overcrowding.

– *recommendation No. 72*: on 17 May 2014, law 67/2014 came into effect, under which the Government is to abrogate the criminal offence of a first irregular entry and stay in Italy, making it an administrative offence. This will be effected through a legislative decree, to be presented by the Minister of Justice with the agreement of the Minister of Economy and Finance, and which must be adopted within eighteen months from the date the law came into effect. This recommendation, too, had been initially rejected by Italy.



Overall, then, Italy has made progress in the implementation of 42% of the 92 recommendations received, including two which it initially rejected (striking out the “aggravating circumstance” of being an irregular immigrant and decriminalising the offence of irregular entry and stay in Italy).

On the other hand, no action has been taken concerning 37% of the recommendations received³. Specifically, Italy has not withdrawn the reservations it expressed on the International Covenant on Civil and Political Rights (recommendation No. 1); it has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families nor that against enforced disappearances (recommendations Nos. 2 and 5); it has not yet introduced the crime of torture into the national legal order, nor has it established the independent National Commission for Human Rights (recommendations Nos. 8 and 11–15), despite several bills having been presented on the issues (see, in this Yearbook, Part II, National Bodies with Jurisdiction over Human Rights, I, D); it has not adopted legislative measures to strengthen the mandate and operational capacities of the UNAR (recommendation No. 16); it has not made human rights training compulsory for police and justice sector workers (recommendation No. 31); it has not amended national legislation in order to recognise the Roma and Sinti communities as national minorities (recommendations Nos. 56 and 58); it has not made a significant increase to its official development assistance (stuck at only 0.16% of GDP in 2013) in order to reach the objective of 0.7% GDP established by the United Nations (recommendations Nos. 90 and 91).

Finally, it is impossible to assess the situation of about 20% of the recommendations because the terms in which they are formulated are so generic as to make it impossible to establish clearly whether or not the objectives set have been achieved⁴.

The Italian Government has only a few months left to further improve the level of implementation of the recommendations received in 2010 and to realise at least the most inescapable of the commitments made on international human rights standards before the now imminent second Universal Periodic Review. The research and editorial committee of the Yearbook hereby expresses once again its hope that the preparatory stage for the Review before the United Nations Human Rights Council be seized as an opportunity to promote the diffusion of a human rights culture in Italy, bringing together the efforts and the commitment of public institutions, private bodies and civil society organisations.

³ Recommendation Nos. 1, 2, 5, 8, 12–14, 16, 17, 24, 25, 27, 31, 38, 41, 44, 50–54, 56, 58, 60, 69–71, 77, 79, 81, 90, 91.

⁴ Recommendation Nos. 9, 10, 23, 33, 37, 39, 47–49, 55, 59, 61, 63–66, 68, 76, 78.