

FREEDOM OF ASSEMBLY IN ITALY

The foregoing information was prepared by Caterina Scuderi, an ECNL intern, who provided research assistance to ICNL Freedom of Assembly thematic portal.

The freedom of assembly (Italian - *diritto di riunione*) in Italy is enshrined in Article 17 of the Constitution¹ that provides that citizens have the right to hold peaceful and unarmed assemblies. Additionally, Article 17 expressly states that a prior notification must be given to the competent authorities only for assemblies in public spaces.

In the minds of the writers of the Italian Constitution, which came into effect in January 1948 after twenty years of fascist regime, the freedom of assembly had to be broadly guaranteed. Thus, reunions can be forbidden only “for proven security or public safety reasons” (Art. 17(2)).

Next to the constitutional norm, two main acts regulate freedom of assembly in Italy:

- The *Single Text of Public Safety Laws* (*Testo Unico delle Leggi di Pubblica Sicurezza*, TULPS) (Royal Decree 773/1931), particularly Title II, Part I (Articles 18 to 24) on “public assemblies and spontaneous assemblies in public places”.
- The *Regulation on the Implementation of the TULPS* (Royal Decree 635/1940), which further details the provisions contained in the TULPS.

Approved in 1931 under the fascist regime, the TULPS has been the object of several amendments as well as judgements of the Constitutional Court as some of its Articles are in breach of the Constitution.

NOTIFICATION: Concerning the obligation of notification, Article 17 of the Constitution explicitly distinguishes between private assemblies or assemblies held in “places open to the public” (cinemas, theatres, etc.) and assemblies held in public places. Only for the latter notification must be given to the competent authority. Article 18 (1) of the TULPS stipulating that notification must be given for both assemblies held in public places and assemblies held in “places open to the public” contradicts Article 17 of the Constitution. The part relative to the obligation of notification for assemblies held in “places open to the public” was, thus, ruled unconstitutional by the Constitutional Court in judgment No. 27 of March 31, 1958.

SPONTANEOUS ASSEMBLIES: There is no explicit provision on spontaneous assemblies in the Constitution. However, Title II, Part I (Articles 18 to 24) of the TULPS regulates public assemblies *and* spontaneous assemblies and does not provide the obligation of notification for the latter.

PARTICIPANTS: Article 17 of the Constitution states that *citizens* are entitled to the freedom of peaceful and unarmed assembly. However, it can be assumed that this freedom can be extended to

¹ All mentioned pieces of legislation are available at the legal database: <http://www.normattiva.it/ricerca/semplice>.

non-citizens, i.e. immigrants, as the Single Text on Immigration establishes that participation in local public life (including assemblies) must be guaranteed to immigrants (Art. 9(12), letter d of the Legislative Decree No. 286/1998). Furthermore, participation in assemblies can be limited for certain categories of citizens and under certain circumstances:

- *People that are deemed to be dangerous for public security and against which the local court has adopted a preventive measure of special surveillance cannot take part in public assemblies (Art. 8 (4) of the Legislative Decree No. 159/2011).*
- *Assemblies and spontaneous assemblies of the members of the armed forces who explicitly present themselves as members of the military or when they are in uniform are forbidden by Art. 1470 of the Legislative Decree No. 66/2010.*
- *Members of the police when in uniform, also when not on duty, cannot take part in political or trade unions' assemblies and demonstrations (Art. 81 (1) of Law No. 121/1981).*

Furthermore, any participant who carries out fascist or Nazi actions is punishable with arrest for up to three years and with a fine between € 103 and 258 (Art. 5 of Law No. 645/1952). The same punishment applies to participants carrying out actions or displaying symbols typical of racist or xenophobic organisations, associations, movements or groups (Art. 2 (1) of Decree Law 122/1993). Participants are also forbidden to wear helmets or any other item, which obstructs their identification (Art. 2 of Law No. 533/1977 on public order issues).

ORGANISERS: Article 17 of the Constitution, the TULPS and the Regulation on the Implementation of the TULPS do not specify who is entitled to organise an assembly. Thus, anyone who is entitled to the freedom of assembly can also organise assemblies.

LIABILITY OF THE ORGANISERS: If the organisers do not give notification of the assembly to be held in public places to the competent authorities, they are punishable with arrest for up to six months and with a fine between € 103 and 413 (Art. 18 (3) TULPS). Art. 18 (3) of the TULPS also disposes that the same applies to the participants taking the floor during the assembly, but the Constitutional Court in its judgement No. 11/1979 ruled this provision unconstitutional. For un-notified walking assemblies, the organisers can be punished with arrest for up to three months and with a fine of up to €51.

Additionally, the organisers can be punished with arrest for up to six months and a fine between € 103 and 413 when they violate the prohibition of the assembly or the measures regulating the time and place of the assembly disposed by the local authority for public order reasons (Art. 18 (5) TULPS).

The organisers cannot be held liable for the peacefulness of the assembly.

RESTRICTIONS ON ASSEMBLY: As a general rule, assemblies can be prevented from taking place only for proven security or public safety reasons (Article 17 (2) of the Constitution). Connected to the constitutional norm, Article 2 of the TULPS disposes that the *Prefetto* (the local representative of the Italian national government), in case of urgency or for serious public necessity, can adopt measures necessary for safeguarding public order and public security. As an example this Article was used by the Genoa *Prefetto* in occasion of the G8 summit (July 2001) to prohibit manifestations from taking place in certain areas of the city during the days of the summit for security reasons. Although the doctrine asserts that the preventive restriction of the freedom of assembly is against the wording of the Constitution, the local courts as well as the European Court of Human Rights recognised the legitimacy of the measures taken by the Genoa *Prefetto* and concluded that they

were not in breach with, respectively, Art. 17 of the Italian Constitution and Art. 11 of the European Convention of Human Rights (ECHR's decision on the admissibility of the application presented by *Bigliazzi and others v. Italy*, 16/12/2008).

As per dissolution of assemblies, the doctrine asserts that armed assemblies can be suspended only when it is not possible to guarantee the peacefulness of the assembly due to the high number of armed people. Otherwise, only the persons who carry arms will have to leave the assembly without the assembly being suspended. Additionally, Article 20 of the TULPS disposes that assemblies can be dissolved when actions or shouts that are seditious or that damage the State's prestige or that can endanger public order or citizens' safety take place or when some crimes are committed. Following the line of thoughts of the Constitutional Court, actions and shouts are considered to be seditious when they imply rebellion and hostility against the State's institutions and the will to subvert them and when they can endanger public order (Constitutional Court judgement 15/1973). Article 21 of the TULPS adds that an assembly is always considered to be seditious when flags or symbols representing social subversion or revolt or contempt towards the State, the government and public authorities or representing sectarian associations are shown.

Articles 22 to 24 of the TULPS regulate how an assembly shall be suspended. Before the competent authorities can intervene using force to suspend the assembly, they have to encourage the participants to suspend the assembly themselves. Only when the participants do not do so, the competent authorities can give order to suspend the assembly with three formal commands. Only if the formal commands have no effect, the competent authorities can use force.

The participants that do not respect the order of dissolving the assembly are punishable with arrest for one month to one year and with a fine between € 30 and 413.

IMPLEMENTATION PRACTICE: It is not rare that regulatory authorities issue conditions and restrictions to the freedom of assembly that are in breach of the Constitution and the TULPS. Additionally, clashes between the protesters and the police are not infrequent when the assemblies concern heated political issues, the most representative case in the past few years being the protests of the "No TAV" in 2011.

EXAMPLES OF ASSEMBLY

Perugia, 23 October 2014 On 7 October 2014 the public prosecutor's office of Perugia, Umbria region, notified six gay rights activists of the charge of disturbing the peace because they kissed during a demonstration on 29 March 2014. The three men and three women held a spontaneous, uncoordinated protest against an anti-gay-marriage group calling itself the *Sentinelle in Piedi*, or Standing Sentries. Among the six activists, four are also accused of holding an unlawful demonstration for "disturbing the other and authorised assembly" taking place the same day in Perugia. Human Rights Watch called upon the public prosecutor to immediately drop the charges because "gay men and lesbian women kissing in public is not a crime. The activists' actions are clearly protected by their right to peaceful protest."²

Turin, 20 November 2014 The decision of the Turin's Court over the clashes in Val di Susa, in the Turin province, between the police and the so called "No TAV" protesters is expected to be reached in mid-January 2015. The trial started in November 2012 against fifty-three members of the "No TAV" movement accused by the State for their violent actions against the police on 27 June and

² Information prepared based on articles: <http://www.hrw.org/news/2014/10/23/italy-drop-charges-against-gay-and-lesbian-activists> and <http://www.quotidianodellumbria.it/quotidiano/content/bacio-gay-perugia-%E2%80%93-la-questura-precisa-%E2%80%93-non-abbiamo-n%C3%A9-arrestato-n%C3%A9-incriminato-nessuno%E2%80%9D>

3 July 2011 in Val di Susa. The State has claimed compensation amounting to € 650,000 and has asked for two hundred years of arrest in total for the fifty-three.

The so-called “No TAV” is a protest movement, which includes citizens as well as representatives of the local administrations who are in the opposition against the construction of a high-speed rail connection between Turin in Italy and Lyon in France. Since the realisation of a high-speed train between the two cities was first discussed in the early 90s, protests have been taking place against the project which is seen by some as waste of money, being useless, and dangerous for the environment and for citizens’ health. Among the numerous “No TAV” protests, the two that took place close to the construction site of Chiomonte in Val di Susa on 27 June and 3 July 2011 were characterised by particularly violent clashes between the protesters and the police. The fifty-three accused protesters claim that in those occasions their violent actions (i.e. the throwing objects at the police) followed an unlawful attack of the police with use of tear gas on the protesters (4357 canisters on 3 July).³

Workers’ National Strike, October- November 2014 One of the priorities of Matteo Renzi’s government, in power since February 2014, has been the reform of Article 18 of the so-called “Workers’ Statute”. The “Workers’ Statute” is a law adopted in 1970 (Law No. 300/1970) and one of the most important pieces of legislation of Italian labour law. Article 18 in particular protects workers against illegitimate firing (notably firing without communicating the reasons thereof to the employee, unjustified firing and discriminatory firing) and disposes the reinstatement and a compensation for workers who had been illegitimately fired. The reform of Article 18 of the “Workers’ Statute” has been the object of an intense political debate for years because some political forces believe that it represents an obstacle for investments in Italy, as labour law is too stringent for businesses.

Since the governmental discussion on the reform of Article 18 became more concrete in the past few months, protests have occurred everywhere in Italy. Protesters have been defending Article 18 which, according to them, represents a fundamental protection for employees. They also demonstrated against the social, economic and labour policy promoted by Prime Minister Renzi. On 25 October 2014 a general strike was promoted by some major Italian trade unions in Piazza San Giovanni in Rome. According to the organisers one million people, including students, workers, pensioners, etc, attended the demonstration from all regions of Italy. Following the general strike, another round of protests (a “Social Strike”) was promoted by some trade unions on 14 November and over twenty demonstrations took place in the main Italian cities. To show their opposition to the government, protesters threw eggs at the local offices of the Democratic Party (Matteo Renzi’s political party) in Genoa and Rome and thirty workers climbed up the Colosseum in Rome. In some cities, like in Milan and Padua, the police pushed back with their clubs and with teargas some protesters that were trying to getting past some police blockades.

Despite the protests, the reform is expected to be approved on 9 December by the Parliament. Another general strike is being planned by some trade unions for 12 December.⁴

³ Information prepared based on the media articles:

http://torino.repubblica.it/cronaca/2014/10/28/news/maxiprocesso_ai_no_tav_la_parola_alla_difesa_rabbia_legittima_dell_a_val_susa-99211334/ and <http://www.notav.info/post/maxiprocesso-lo-stato-vuole-650-000-e-dai-no-tav-ma-chiese-1-000-lire-ai-neofascisti-imputati-per-piazza-fontana/>

⁴ Information was prepared based on media articles:

http://www.repubblica.it/politica/2014/11/14/news/sciopero_sociale_scontri_e_proteste_nelle_citt_a_roma_lavoratori_in_cima_al_colosseo-100545592/#gallery-slider=100529668;
[http://www.repubblica.it/politica/2014/10/25/news/manifestazione_cgil_articolo_18_roma_camusso_renzi-98964756/;](http://www.repubblica.it/politica/2014/10/25/news/manifestazione_cgil_articolo_18_roma_camusso_renzi-98964756/)
http://www.repubblica.it/politica/2014/11/21/news/jobs_act_renzi_ultimo_voto_in_parlamento_il_9_dicembre-101080178/

NATIONAL LAWS:

All mentioned pieces of legislation are available at <http://www.normattiva.it/ricerca/semplice> by inserting the number of the specific law/decreto in the box next to 'numero' and the year in the box next to 'anno (aaaa)'.