



Roma, July 11, 2023

Dear sirs,
Committee on the
Elimination of Racial
Discrimination

Object: report on cases of racial discrimination in Italy 2020-2023

INTRODUCTION

Active since 6 October 1987 with the establishment of the Italian Helsinki Committee for Human Rights, the F.I.D.U. (Italian Federation for Human Rights) aims to promote the protection of human rights themselves as enshrined in the Universal Declaration of Human Rights of 1948, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of the 1966, the Helsinki Final Act of the Conference on Security and Co-operation in Europe of 1975, the Charter of Fundamental Rights of the European Union of 2007 and other relevant international documents. The FIDU therefore intends to work to spread the knowledge of human rights, monitor and denounce their violations, create greater sensitivity in public opinion, exercise influence on States so that they comply with the commitments subscribed to in the field of human rights. In particular, the FIDU refers to the Seventh Principle of the Helsinki Final Act entitled “Respect for human rights and fundamental freedoms”, with which the States parties recognize that such respect is an “essential factor of peace, justice and well-being necessary to ensure the development of friendly relations and cooperation between the States themselves and between all the States of the world”. FIDU also recognizes the growing importance of protecting the environment and the territory and intends to contribute to the development and progressive implementation of a specific environmental law.

ITALIAN LAWS

- The “XII Transitional and final provision” of the **Constitution of the Italian Republic**, in the first paragraph, establishes that “*The reorganization, in any form, of the dissolved Fascist party is prohibited*”. In implementation of the aforementioned provision, the Law of 20 June 1952, n. 645, in the matter of “Implementation rules of the XII transitional and final provision (first paragraph) of the Constitution”, in art. 1, specifies that there is a reorganization of the dissolved fascist party when an association, a movement or in any case a group of people of no less than five pursues anti-democratic aims typical of the fascist party: 1. glorifying, threatening or using violence as a method of political struggle, 2. or by advocating the suppression of the freedoms guaranteed by the Constitution, 3. or denigrating democracy, its institutions and the values of the Resistance, 4. or carrying out racist propaganda, 5. or directs its activity to the exaltation of exponents, principles,

facts and methods of the aforementioned party, 6. o carries out external demonstrations of a fascist nature.

- The International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature in New York on 7 March 1966, was transposed into Italian law with **law 13 October 1975, n. 654**.

- Addressing the topic of Italian national legislation, it is certainly necessary to mention the law of 25 June 1993, n. 205, which sanctions and condemns phrases, gestures, actions and slogans with the aim of inciting hatred, inciting violence, discrimination and violence for racial, ethnic, religious or national reasons. It is known as the “**Mancino law**”, from the name of the then Minister of the Interior who was its proponent, Nicola Mancino. It is today the main legislative instrument that the Italian legal system offers for the repression of hate crimes and incitement to hatred.

The art. 1 (“Discrimination, hatred or violence for racial, ethnic, national or religious reasons”) provides as follows: “Unless the fact constitutes a more serious crime, [...], is punished:

a) with imprisonment of up to one year and six months or with a fine of up to 6,000 euros whoever propagates ideas based on racial or ethnic superiority or hatred, or instigates to commit or commits acts of discrimination on racial, ethnic, national or religious grounds;

b) with imprisonment from six months to four years whoever, in any way, incites to commit or commits violence or acts of provocation to violence for racial, ethnic, national or religious reasons.

Any organization, association, movement or group whose aims include the incitement of discrimination or violence for racial, ethnic, national or religious reasons is prohibited. Anyone who participates in such organizations, associations, movements or groups, or assists in their activities, is punished, for the mere fact of participating or assisting, with imprisonment from six months to four years. Those who promote or direct such organizations, associations, movements or groups are punished, for this alone, with imprisonment from one to six years.”

The art. 2 (“Provisions of prevention”) establishes that “Anyone who, in public gatherings, makes outward displays or flaunts emblems or symbols proper or usual to organizations, associations, movements or groups” as defined above “is punished with the penalty of imprisonment up to three years and with a fine ranging from two hundred thousand to five hundred thousand lire.” Furthermore, the same article prohibits propaganda in stadiums, providing that “access to places where competitive competitions are held is prohibited for people who go there with the emblems or symbols” mentioned above. “The offender is punished with imprisonment from three months to one year.”

The art. 4 punishes with imprisonment from six months to two years and with a fine “those who publicly extol exponents, principles, facts or methods of fascism, or its anti-democratic aims. If the fact concerns racist ideas or methods, the penalty is imprisonment from one to three years and a fine from 1 to 2 million lire.”

Besides the repressive approach, some ancillary sanctions of a re-educational nature are beginning to be adopted such as, for example, the obligation for the convict to perform unpaid work for social or public utility purposes in favor of the community.

- In the context of Title XII of the Second Book of the **Penal Code**, dedicated to crimes against the person, in Chapter III on crimes against individual freedom, art. 2, paragraph 1, lett. i), Legislative Decree 1 March 2018, n. 21 has inserted Section I-bis, including Articles 604-bis and 604-ter, dedicated to “crimes against equality”. The art. 604-bis of Codice Penale (Penal Code) regulates the crime of “propaganda and instigation to commit a crime for reasons of racial, ethnic and religious discrimination”.

A problematic profile emerges from the associative case referred to in paragraph 2 of article 604-bis of the Criminal Code (“Codice Penale” – C.P.). The question that doctrine and jurisprudence have asked themselves is whether, for the purposes of integrating the crime referred to in Article 604-bis C.P., comma 2, it is necessary for the association to have a certain level of organization and stability or whether it is sufficient a plurality of subjects who share the same ideas. Well, according to the jurisprudence of legitimacy any organization can assume importance for the purpose of integrating the crime. It is the law, in fact, that also refers to organizations, movements and groups and not just

to structured associations.

The 3rd paragraph of the Art. 604 bis C.P. reads: *“The penalty of imprisonment from two to six years is applied if the propaganda or instigation and incitement, committed in such a way that there is a concrete danger of diffusion, are based in whole or in part on the denial, minimization in a serious way or on the apology of the Holocaust or the crimes of genocide, crimes against humanity and war crimes, as defined by articles 6, 7 and 8 of the Statute of the International Criminal Court”*.

A relevant issue concerns the fact that the criminal sanction only applies in the presence of typed discriminatory conduct, also with reference to protected personal characteristics, which are only those expressly indicated: race, ethnicity, nationality and religion. However, the discriminatory phenomenon today also affects further characteristics of the person such as gender, sexual orientation, gender identity, disability, among others. This broader perspective does not emerge only from social movements, but it can also be deduced from documents with a normative content of European origin (EU directive n. 29/2012). There are also numerous acts of “soft law”, including, above all, two resolutions on homophobia of the European Parliament of 2006 and 2012 which equate homophobia with racism, xenophobia, anti-Semitism and sexism. Many European countries have, at least, one aggravating circumstance that affects behavior aimed at committing discriminatory acts for reasons related to sexual orientation and gender identity, arriving, in some cases, to outline an independent type of crime. Italy is one of those countries that has not yet done much in this field. The so called “DDL Zan” (from the surname MP who proposed it 2020) was a draft bill aimed, among else, at extending the scheme referred to in article 604-bis of the criminal code to acts based on sex, gender, gender identity, sexual orientation or disability, but it was not approved by the Italian Parliament. Thus, Italy has not yet equipped itself with an efficient repressive system of conducts motivated by a feeling of hatred and oppression towards those with certain characteristics.

CASES

- It is important to notice that the judges’ decisions do not always appear severe and perhaps not even completely consistent with the legislative provisions. Suffice it to mention the sentence of the Supreme Court of Cassation n. 33414 of 2020: *“It does not assume criminal significance within the provision of art. 604-bis the mere manifestation of hostile contempt towards a specific ethnic group for the behaviors of its members. (In justification, the Supreme Court observed that the provision pursuant to article 604-bis, paragraph 1, letter a, did not apply to the conduct of the defendant, who did not appear to have carried out any activity of propaganda of ideas, having limited himself [...] to utter a disparaging expression in public with which he had expressed his hostility towards people coming from the Turkish or Arab area for their behavior)”*.

- The case relating to the dedication by the city council of Affile, near Rome, of a mausoleum to the fascist marshal Rodolfo Graziani is worth noticing. With a resolution of 21 July 2012, the formal naming of the monument was decided, the following 11 August 2012 being both the anniversary of the birth of the well-known soldier and the inauguration of the monument. On that occasion, the mayor even exalted Graziani. With a sentence dated 7 November 2017, the Court of Tivoli declared, in first instance, the defendants (mayor and councilors of the Affile municipality) guilty of the crime pursuant to art. 4 of Law no. 205/1993, which punishes “those who publicly exalt the exponents, principles, facts or methods of fascism, or its anti-democratic purposes”. On 14 March 2019, the Court of Appeal of Rome confirmed the sentence against the defendants, finding the existence of two unlawful episodes linked by the constraint of continuation, i.e. the resolution to name the shrine and the organization of the ceremony. However, with the sentence of 25 March 2021, n. 11576, pronounced in the legitimacy seat following the appeal of the convicted persons, the Supreme Court annulled the contested sentence, postponing the merits to a new trial. In considerations of law, the judges limited themselves to recalling constitutional and legitimacy jurisprudence, regarding the link between the apology of fascism and concrete danger, to be ascertained through the requisites

dictated by art. 56 of the criminal code, for the reconstitution of the fascist party. In the opinion of the Supreme Court, the appeal ruling would have made the exaltation of the contested conducts (the approval of the resolution and the subsequent inaugural ceremony of the park and the museum) coincide with the polarization on marshal Graziani, without specifying anything about the reason and on the basis of which elements would such polarization have integrated an exaltation as well as without deepening the danger, on a concrete level, of the reconstitution of the fascist party; danger derived only from the public appearance of the defendants and from the topographic location of the museum. The aforementioned legal case has caused a lot of uproar, not only on the substantive level, but above all on the formal level, as the Supreme Court seems to have crossed the line of legitimacy to encroach on the merits of the matter. Precisely the profile relating to the concrete danger of the reconstitution of the fascist party, as recalled by the judges, appears to be a (perhaps) astute logical-juridical device, aimed at the non-configuration of the crime of apology for fascism, thus opening the way to dangerous “redemptions” of dubious historical subjectivities.

- last but not least, the unshareable sentence no. 1602 of 2020, the Italian Supreme Court with which it was canceled a sentence of the Court of Appeal of Milan which condemned two Italian citizens for having committed the crime of propaganda and incitement to commit a crime for reasons of racial discrimination, pursuant to art. 604 bis of the criminal code. In that present case, the convicts had displayed a poster on an advertising truck with the message "illegal man kills three Italians with pickaxes - death penalty immediately", with the addition of the image of a guillotine and the severed head of a black man. According to the Court of Cassation, the reasoning carried out by the trial judges in subsuming this conduct within the scope of the incriminating case of art. 604 bis of the criminal code is fallacious for not having proved the concrete dangerousness of the conduct in question - an element that was considered indispensable for the integration of the crime. In fact, in the light of the jurisprudence of the Cassation, the crime is committed when it is demonstrated that the disputed conduct has led to the concrete danger of discriminatory behaviour. In the present case, the contested sentence had instead considered the diffusion of the posters to be discriminatory due to their aggressive content. According to the Court, the sentence should instead have offered a reconstruction of the context in which the conduct took place in order to be able to appreciate its discriminatory nature and should have investigated the concrete suitability of the posters to induce others to carry out discriminatory acts. Furthermore, according to the Cassation, discrimination on racial grounds should be based exclusively on the "personal quality" of the subject and not on his behaviour.

In this judgment, the Court's argument was based exclusively on the consideration of previous legitimacy jurisprudence relating to the key definitions of the relevant conduct and the notion of "discrimination on racial grounds". On the other hand, there are no references to the relevant international sources and to the application practice of the Committee for the Elimination of Racial Discrimination, the supervisory body set up by the Convention for the Elimination of Racial Discrimination, whose provisions have been implemented in Italy also through art 604 bis of the criminal code.

ON THE TERRITORY

Since 2020, attacks by the racist press have been on the rise, even though Italy as a whole remains a country with a low level of racism. In 2021 there were 1,349 racist attacks out of a population of around 60 million people; however, the figure is growing worryingly. In 2020 there were 913 according to data from the National Office Against Racial Discrimination (UNAR) of the Presidency of the Council of Ministers.

The pyramid of hatred traced by UNAR puts people attacked for ethnic-racial reasons first: 2021 recorded 709 cases compared to 545 in 2020. Of these, 499 victims are foreigners. Other cases relate to people attacked for the “color of their skin” (137), to whom insults are addressed that follow a rigid script dear to the racist vocabulary: “shit negro”, “shit Moroccan”, “clandestine”, “go away”, “return to where you came from”. There were also 241 reported cases of discrimination for

“Religion or personal beliefs”, compared to 183 in 2020. As for anti-Semitism, there have been 170 cases in 2021, compared to 89 in 2020.

Avv. Emiliano Bartolozzi
Coordinatore Comitati F.I.D.U.

Prof. Antonio Stango
Presidente F.I.D.U.