



Ministry of Justice

Legislative Office

Rome, 22 March 2019

To: Ministry of Interior
Department for Civil liberties and Immigration
Central Directorate for Civil Rights, Citizenship
and Minorities

Ref: 6/1/-53 (2019)

RE: Council of Europe. Fifth Italy's report on the implementation of the Framework Convention for the Protection of National Minorities

Further to a request for a contribution on the implementation of the Framework Convention for the Protection of National Minorities, and in so far as this office is concerned, we would like to inform as follows.

First of all we would like to note that this matter is closely related to so-called hate crimes, and underline Italy's considerable commitment in this field, consistent with the context of international initiatives adopted to prevent and fight hate crimes and hate speech. The activity of the multilateral bodies of which Italy is a member constitutes an indispensable benchmark for planning intervention strategies at national level.

Online illegal incitement to hatred has considerably increased in the last years going hand in hand with widespread episodes of intolerance all over Europe.

Hate speech is rightly considered by the international community as conducive to the perpetration of actual hate crimes, i.e. violent acts characterized by a discriminatory intent. Moreover hate speeches too can be considered hate crimes when they express extreme hostility towards a person or a social group based on their race, ethnic origin, religion, sexual orientation, gender identity, or other specific physical or mental conditions.

The global threat resulting from an improper use of the Internet can be effectively faced only by sharing and harmonizing the measures adopted by the States, knowing that any action in this field

requires a multidisciplinary approach and the involvement not only of State administrations, but also of members of international organisations, of private associations, of journalists, of social media, and in particular of Internet service providers.

On many occasions the Council of the European Union, dealing with this issue, has recognised the risk posed by social media and has underlined the importance of a multilateral approach and the fundamental role of education and youth employment to develop critical thinking, and has emphasized the importance of media literacy in learning processes.

The issue of the “Counter-narratives” necessary to support civil society in delivering effective “positive” narratives against hate speech online was dealt with at the conference of 7 April 2017 held in Malta, during Maltese presidency of the Council of the European Union. It was again dealt with by the Ministers of Justice at the 8 June 2017 JHA Council meeting where Member States reiterated their support to the European Commission’s monitoring activity in respect of the implementation of the Code of conduct on countering online illegal hate speech signed by the Commission, Facebook, Microsoft, Google, YouTube and Twitter on 31 May 2016.

This Code of conduct envisages several important commitments: in particular upon receipt of a valid notification aimed at the removal of illegal forms of incitement to hatred, the IT Companies will have to review such requests against their rules and community guidelines and national laws transposing the Framework Decision 2008/913/JHA, with dedicated teams. This task must be performed in less than 24 hours and, if necessary, it must lead to remove the illegal content or to disable access to it.

The IT companies concerned and the European Commission have agreed to assess compliance with the Code on a regular basis through monitoring and periodic discussion at the **High Level Group on combating racism, xenophobia** in Brussels. This group includes representatives of Member States, of the national associations most committed in this field, and other important institutional stakeholders such as the Council of Europe. Italy is represented by the Ministry of Justice and the Ministry of Interior, contact points for the implementation of the Code of conduct at national level and by the Office for the Fight against Racial Discrimination (UNAR).

At European level, starting from October 2016, monitoring was carried out in order to assess the results achieved following the adoption of the above-mentioned Code. Monitoring, in particular, aimed at ascertaining if platforms, as required, reviewed within 24 hours hate speeches reported by 12 organisations chosen as “trusted reporters” in 9 Member States including Italy and how long it took after the report for the content to be removed. Since a number of concerns have emerged, the European Commission promoted a second reporting round which started on 20 March 2018 and was concluded on 5 May 2018. Its conclusions have been brought to the attention of the Ministers of Justice during the 8 June 2017 JHA Council meeting.

The results show that, one year after the adoption of the Code of conduct on countering online illegal hate speech, remarkable progress has been made by social media platforms in respect of the provisions of the Code, especially with regard to: a) improving effective assessment of notifications regardless of their origin and their processing b) boosting the notification communication system c) training staff d) increasing cooperation with civil society.

In particular during the second monitoring round 197 instances of incitement to hatred have been spotted and reported in Italy, among them, more than 50% concerned Facebook while the remaining ones concerned YouTube and Twitter. Facebook and YouTube removed 95% and 100% respectively of the reported content. Response time was reasonable both for Facebook (less than 48 hours) and for YouTube (less than 24 hours), while Twitter performed less efficiently but only due to technical problems which can be easily fixed.

However IT companies are expected to improve their performance as far as the transparency of the criteria adopted to analyse reported content is concerned, and also with respect to the manner and timing of response to ordinary users who are not “trusted reporters”.

In relation to this the European Commission launched a third monitoring round which started on 6 November 2017 and was completed on 15 December 2017. The European Commission, performed an essential task in this activity because it extended monitoring to the content reported by ordinary citizens. In this respect the Italian Ministry of Justice has proposed to involve in this activity the associations committed to fight hate conduct and has asked to report the outcome of reports made by them to Internet service providers in their capacity as ordinary users and not as trusted sources and at the same time to collect reliable statistical data with regard to reports of hate content directly received by platforms indicating the number of reports not followed through or not reviewed.

As regards the need to balance the various interests/assets involved, the principles established by the European Court of Human Rights (ECHR or “the Court”) must be adopted as fundamental criteria to guide the action of the public administration - in accordance with the fundamental rights concerned - in its application of the European Convention on Human rights (the “Convention”) in relation to hate speech. The Court has delivered some important decisions which have identified States’ positive obligations in relation to the fight against all forms of racism and to speech inciting to hatred, intolerance, violence and terrorism (*inter alia*, see **Jersild v. Denmark**, September 1994 and **Gunduz v. Turkey**, December 2003). According to the Court the exercise of the right to freedom of expression enshrined by article 10 of the Convention finds an impediment when it is contrary to the observance of other universally recognised democratic values such as tolerance, social peace, non-discrimination, in this case it loses its protection. It follows that a speech which incites to hatred, both in form and in content, constitutes an abuse of the right to freely express one’s thought because it “destroys” the corresponding right to the respect for private life (reputation and/or personal identity) of the individual or the group affected by such a speech (article 17 of the Convention) (among all other authorities, see **Garaudy v. France**, June 2003 and **Norwood v. the United Kingdom**, November 2004).

The Court, therefore, has considered acceptable – subject to the requirement that any measure be proportionate and adequate to the end pursued - for States to impose sanctions on individuals who express themselves in “ways” that incite to violence or justify racial hatred (see **Erbakan v. Turkey**, 6 July 2006).

As regards the specific issue of hatred online we must mention the important judgement delivered by the ECHR Grand Chamber in the case **Delfi v. Estonia** (June 2015). In this case the Court for the first time dealt with the issue of comments published by some users in response to an article published on an Internet news portal (Delfi AS) and of possible responsibilities of the company owner of the portal.

First of all the Court affirmed that the comments in question were objectively vulgar and incited to hatred and violence and therefore could not attract the protection provided for by article 10 of the Convention. The Court admitted that the Internet was an unprecedented means of promoting freedom of expression, but it also underlined the risks it posed: users’ comments could spread “worldwide” very quickly and could remain on the Internet for a long time. The Court therefore held that the portal’s owner company had been rightly (and not disproportionately) sentenced to pay a fine by public authorities because it had not removed the violent comments rapidly, considering that it should have done so even before receiving the victim’s request to that purpose.

In this connection and in line with the relevant European initiatives, on the domestic front, on 3 November 2016 the Italian Ministry of Justice and some Facebook representatives presented a

guideline entitled “*Think before sharing*” to promote the proper use of social media and online security.

At national level it must also be mentioned the work carried out over a period of about 14 months by the House of deputies' committee on intolerance, xenophobia, racism and episodes of hatred chaired by Ms Laura Boldrini, Speaker of the House, and named after Jo Cox, the British MP killed on 16 June 2016 during the referendum campaign on Brexit. On 6 July 2017 the Committee's final report was approved. It contains a thorough analysis of the causes and various forms of hatred speech and acts of hatred and suggests to all competent actors a number of recommendations for prevention and intervention strategies.

The aforementioned recommendations call for actions which the Ministry of Justice has already undertaken and underline the need for a full and effective implementation of the existing legislation in this field, for increased European and national monitoring of hate crimes - with a view to identifying common definitions - and for an increase in intercultural training programs for judges.

On the substantial law side, it should be highlighted first of all that the legal framework governing the prevention of and fight against hate crimes in our Country appears already strong and in line with the international instruments which protect the individuals from any form of discrimination.

The contents posted on social networks may, in fact, give rise to the criminal liability of the material author of the fact, where they have a defamatory or libelous significance and, in the framework of the relevant investigations – where the relevant requirements are met – the law provides for the precautionary seizure, through the shutting-down both of websites and of individual webpages, including the profiles posted on social networks, as indisputably now recognized by the Court of Cassation (judgment no. 31022, delivered by the Full Bench of the Court of Cassation on 29 January 2015).

On the legislative side, it should be mentioned that during the past parliamentary term a government Bill was submitted to the Parliament. The Bill aimed at ratifying the Additional Protocol of the Council of Europe Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems (done at Strasbourg on 28 January 2003). The Bill, approved by the Chamber on 6 July 2016, was subsequently transmitted to the Senate and lapsed because of the dissolution of Chambers.

On 17 May 2017 the Law no. 71/2017 was adopted; the Law concerned the phenomenon of cyberbullying and had been long awaited. It introduced precautionary measures aimed at protecting and educating the minors involved, both when they are victims and when they are authors of crimes, guaranteeing interventions addressed to all age groups within school institutions.

The major innovations included the possibility, for the minor, of requesting directly to the web provider the shutting-down or the removal of the “cyber aggression” and, where the web provider ignores the alarm, the victim may apply to the Data Protection Authority, which shall intervene within the subsequent 48 hours. Moreover, the Law provides for a “warning procedure”, along the lines of the provisions already governing the stalking, as well as the establishment of an inter-ministerial technical board within the Presidency of the Council, entrusted with the task of coordinating the various interventions and developing an integrated plan against bullying through the web.

Another measure provided for is the shutting-down in favor of underage victims of acts of cyberbullying, even when the conducts do not amount to the crimes of unlawful processing of personal data or to other offences.

The reflection may not neglect a comparison with the legal initiatives, more markedly sanctionary, of other European Countries, such as the one recently adopted in Germany, where a law was passed (“*Netzwerkdurchsetzungsgesetz*” “Act to improve the enforcement of the law in social networks“), and entered into force on 1 October 2017, which applies only to social networks having at least two million of registered users in the national territory, and which enables the infliction of fines of up to five million euros to social networks in which messages inciting to hate and other criminal contents are published, where they fail to promptly remove the manifestly unlawful contents within 24 hours of receiving the complaint; and, where the cases are more complex, within 7 days of receiving the complaint. Providers of social network services which receive more than 100 complaints per calendar year about unlawful content are obliged to produce half-yearly reports on the handling of complaints about unlawful content on their platforms, and are also obliged to publish these reports in the Federal Gazette as well as on their own website, no later than one month after the half-year concerned has ended.

With regard to the issues of the initiatives by the Ministry of Justice, the issue of hate crimes has been indicated in the Guidelines addressed to the Superior School of Judiciary as one of the priority targets in the training of judges, in consideration of the fact that the jurisdictional activity must respond adequately to the change, while balancing the different properties/interests involved.

It is however undeniable that procedural instruments, even when they are implemented correctly and timely, can result inadequate when the effects of contents have already been published on the internet in a viral and substantially, irreversible manner. The web gives also rise to complex problems of territorial jurisdiction because of the transnational nature of the internet and of the establishment of the identity of the authors of harmful conducts. It is therefore necessary to follow other paths in order to supplement the jurisdictional protection.

Incidentally, no social pact is based only on the threat of sanctions: behaviors are not determined only by codes, but are the consequence of common sense and of the system of coexistence connoting the society, and are the fruit, in their turn, of social, political and cultural actions. The solution which has to be put in place should not be only a system of sanctions, but should indefectibly go through the construction of “antibodies”, within the web, which are able to fight against fake news, proposing a counter-information having an analogous structure, which is correct and clean, expresses itself through a slim and efficacious dialectic, available to any citizen.

An approach towards an increased accountability of providers for the content of messages published on the web appears crucial, and therefore, on the balance, their position should be brought closer to that of publishers, according to the indications provided by the Court of Human Rights.

The meetings, promoted by the Ministry of Justice, with several associations of the civil society, in order to identify a shared path and build an alliance, namely a roadmap, against hate propaganda transmitted through the internet go in that direction. One of the vital hubs of that path should be found in the creation of an interacting network among all the associations engaged in the fight against online hate speeches, leading to the creation of a nonpublic and non-state entity which, in alliance with the platforms, is able to stimulate a prompt action in any situation in which the language pertaining to the web and the social networks constitutes a real threat or is detrimental to the dignity of the individual and, as already said, introduces counter-narratives able to nullify hate propaganda.

Therefore, the establishment of a working group named “Permanent Board to combat hate crime and hate speech”, within the Office of the Cabinet of the Ministry of Justice, is grafted in this framework.

The Ministerial Decree of the Minister of Justice of 14 December 2017, establishing the aforementioned working group, indicated the tasks of the new body: in particular, the Board performs an advisory activity relevant to the initiatives and interventions concerning the Ministry of Justice, at national, European Union, and international level, in whatever way correlated with the combat against hate crime and hate speech. The Board will be able to submit reports to proposals, drafted also on the basis of the monitoring and analysis of phenomena relevant to discrimination in any field, particularly with regard to online hate contents, in connection with the outlines submitted for its examination, in order to offer evaluative elements about their impact in the fight against discriminatory conducts. Moreover, it will be able to acquire documents and propose initiatives.

It should also be mentioned that, on 24 July 2018, the Bill no. 711 was communicated to the Presidency of the Senate (on initiative of senators TESTOR, SOLINAS, FLORIS, SERAFINI, CESARO, LONARDO, MALAN, MOLES, PICHETTO FRATIN and CONZATTI), concerning the ratification and execution of the European Charter for Regional or Minority Languages, done at Strasbourg on 5 November 1992 (assigned to the Committees I – Constitutional Affairs and III – Foreign Affairs, Emigration – on 28 September 2018, for the examination aimed at the report. Opinions of the Committees: II Justice, V Budget; VII Education; VIII Public Works; XII Health, Regional Issues – added on 23 January 2019; announced in session no. 82 of 23 January 2019).

Finally, it is worthwhile mentioning an interesting decision, concerning the integration of Roma, Sinti and Caminanti communities, delivered by the Court of Rome on 30 May 2015, as a result of a complaint lodged by some associations devoted to the protection of civil rights. It decided – also in consideration of the overcoming of the nomadism condition, limited now to about 2% of the Roma, Sinti and Caminanti populations – that the presence of Roma settlements was discriminatory for the mere fact that it represented a large scale housing solution, directed only at persons belonging to the same ethnic group and lacking in the typical features of a positive action:

“It must indeed be considered as discriminatory any large scale housing solution directed only at persons belonging to same ethnic group, especially if realized, as in the case of the settlement sited in La Barbuta, in order to hinder cohabitation with the local population, and in terms of equal access, at fair conditions, to education and social health services located in an area where there is a serious risk for the health of the persons residing there”.

Therefore, the order highlighted the discriminatory nature of settlements reserved only to one ethnic group and declared their unlawfulness, regardless of the hygienic, health, geographical and housing conditions, and even beyond or against the will of the persons concerned, having considered that the issue of housing solutions for Roma fell within the more general context of the provisions protecting the right to housing.

Signed: The Head of Legislative Office

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