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Fédération internationale des ligues des droits de l'Homme

OBSERVATIONS

ON THE SIXTEENTH TO EIGHTEENTH PERIODIC REPORTS OF ITALY TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

(CERD/C/ITA/16-18)

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1. PRESENTATION OF THE WORK

1. The Unione forense per la tutela dei diritti umani (hereinafter “UFTDU”) is a **no-profit association** set up on March 2nd, 1968 by a group of Italian lawyers, judges and scholars. The main purpose of the association, as laid down in its Statute, is “to spread, especially among those belonging to the Bar and among law practitioners, the knowledge of national and international norms concerning the protection of human rights, and to promote their actual and effective observance at the judicial, administrative and legislative level”.

2. In March 2004 the UFTDU has been approved as correspondent member of the International Federation of Human Rights (hereinafter “FIDH”) and in April 2010 the International Congress of the FIDH in Yerevan, has conferred to the UFTDU, upon proposal by the FIDH’s International Bureau, the status of affiliate member. Throughout the years, the UFTDU has established a close cooperation with the FIDH on a wide range of matters concerning the protection and promotion of human rights and, in particular, actively supporting each other in their judicial and non-judicial advocacy initiatives before European and international courts and human rights treaty bodies. This cooperation is also strengthened by the participation of UFTDU’s chairman as *Chargé de mission* at the International Bureau and his involvement as International Observer of Trials on behalf of FIDH.

3. Over the years, the UFTDU has pursued its statutory engagements mainly through human rights advocacy activities, both at the political level – actively contributing to the drafting of human rights bills, and to public debate on relevant human rights issues, notably through its internet web-site (www.unionedirittiumani.it) and the publication of a legal review (*I diritti dell'uomo. cronache e battaglie*) – and at the judicial level –taking part as amicus curiae in proceedings before national and international courts or quasi-judicial bodies (in particular, the European Court of Human Rights, the European Court of Justice, and the UN Human Rights Treaty Bodies), as well as supporting direct representation of human rights victims by its team of specialized lawyers. Since June 10th 2005, UFTDU is also included in the “Register of associations and bodies carrying out activities in the field of the fight against discrimination”, established by National Office Against Racial Discrimination (UNAR). This inclusion allows UFTDU to undertake legal proceedings on behalf or in support of victims of racial or ethnic discrimination, and to obtain compensation in their favor.

4. Within the framework of its statutory commitments, the UFTDU participates on a regular basis to UN Charter-based and treaty-based supervisory procedures to ensure Italy’s full compliance with its international human rights obligations. Notably, since 2005, UFTDU took part to the examination of the Italian periodic reports under the ICCPR, CAT, CERD, CEDAW and CRC, by submitting its alternative reports and by attending the Committees’ private and public sessions.

5. In line with its previous engagement, UFTDU has resolved to take part in cooperation with the FIDH to the procedure of examination of Italy’s sixteenth to

eighteenth periodic report submitted in accordance with the Convention on the Elimination of All Forms of Racial Discrimination (CERD)

6. Having regard to the last Concluding Observations of the CERD Committee concerning Italy (CERD/C/ITA/CO/15) and to the responses of the Italian Government contained in the sixteenth to eighteenth periodic report (CERD/C/ITA/16-18), the team of experts set up by the UFTDU has drafted the present alternative report for consideration by the Committee during its next 80th session (13 February to 9 March 2012).

7. Notably, the present report focuses on the following main issues that are of particular concern for the UFTDU: 1. The alarming use of racist ideas for political purposes and of xenophobic arguments in political debates. 2. The persisting racial prejudices and negative stereotypes disseminated by the Italian media. 3. The absence of specific rules to prevent the spreading of xenophobic contents in social networks and the lack of measures imposing criminal liability for acts of a racist and xenophobic nature committed through computer systems.

8. Each issue dealt with in the report has been identified by reference to the corresponding “recommendation” of the Concluding Observations adopted by the Committee. Where deemed necessary, the team of experts has included in the text a recommended course of action that should be proposed to the attention of the Italian Delegation.

9. The observations and comments contained in the present report are based on the desk and field research activities undertaken by the members of the team, and take into account the information received from institutional partners and organizations to which UFTDU is particularly grateful. The experts who contributed to the drafting of the report are listed in the Annex together with an short presentation of their professional background. The work of the experts was supervised and coordinated by Anton Giulio Lana, general secretary of the UFTDU, and Andrea Saccucci, member of the Executive Board of the UFTDU.

2. RACIAL DISCRIMINATION IN POLITICAL DEBATES

10. Concerning Article 4 of the International Convention on the Elimination of all forms of Racial Discrimination, the UFTDU consider that the Italian Government did not adopt sufficient measures to comply with Committee Recommendations No. 15 (CERD/C/ITA/CO/15)¹ and is seriously concerned by the increasing racial discriminatory and xenophobic attitude of Italian politicians, publicly expressed and tolerated by local and central authorities. Besides, we consider that last periodic report of

¹ CERD/C/ITA/CO/15, 16 May 2008: *The Committee recommends that the State party increase its efforts to prevent racially motivated offences and hate speech, and ensure that relevant criminal law provisions are effectively implemented. The Committee recalls that the exercise of the right to freedom of expression carries special duties and responsibilities, in particular the obligation not to disseminate racist ideas. It also recommends that the State party take resolute action to counter any tendency, especially from politicians, to target, stigmatize, stereotype or profile people on the basis of race, colour, descent and national or ethnic origin or to use racist propaganda for political purposes.*”

the Italian Government (CERD/C/ITA/16-18) does not present an adequate view of the effective measures adopted both to prevent and to concretely enforce the Italian law.

11. The Italian law provides specific provisions against racism and xenophobia. Law No. 654/1975 establishes in Art. 3 that “*everyone who promotes ideas that are based on racial or ethnic superiority or hatred, or who incites to commit or commits acts based on racial, ethnic, national or religious discrimination, will be punished with imprisonment up to one year and six months or with a fine of maximum € 6000*” (lett. a) and that “*everyone who incites to commit or commits violence or acts that provoke violence, which are based on racial, ethnic, national or religious discrimination, will be punished with imprisonment from six months up to four years*” (lett. b). Moreover, Art. 1-bis of the Law No. 205/1993 (Legge Mancino) provides that a person convicted for a racially motivated crime can be sentenced to additional penalties or restrictions such as the withdrawal of the driving license or passport and the ban from participating in any manner to activities of propaganda for political or administrative elections.

12. Nevertheless, these specific provisions have been easily avoided through particular measures, like the stay of execution². Cases Tosi and Gentilini, reported by the Italian government as positive actions adopted against intolerant and racist expressions, have just benefit of a “stay of execution”. In case Tosi, in 2009 the Court of Cassation (Fourth Criminal Section) passed the ultimate sentence and confirmed the offence of propaganda of racist ideas with two months of detention, a 4000 euros fine, ban from participating to public meetings for three years and payment of 3500 euros for legal expenses. Nevertheless, Flavio Tosi benefit of stay of execution and the sentence was not executed. The UFTDU finds extremely significant to underline that Flavio Tosi is no more regional councilor, but even mayor of Verona, being able to participate to administrative elections in 2007. Thanks to this device the judgment has not produced any concrete consequence for the convicted politician and it has undertaken merely a declaratory meaning.

13. With regard of case Gentilini, the judicial matter was almost the same. Giancarlo Gentilini, deputy mayor of Treviso and guilty of incitement to racial hatred, was sentenced in 2008 by the Court of Justice of Venice with a 4000 euros fine and the ban from participating to public meetings for three years. As for the previous case, the Court of Justice of Venice ordered the stay of execution, therefore allowing Giancarlo Gentilini to continue his political career in local administrations as deputy mayor.

14. Therefore, even if Italian law provides special measures to eradicate incitement to or acts of racial discrimination, politicians found to be guilty are not concretely punished for their crimes. It is clear that the stay of execution and other similar devices deeply undermine the force and the effectiveness of a sentence and undo the concrete prosecution of convicted politicians. Moreover, this promotes feelings of impunity and undermine the preventive function of law. In the two cases in point, Flavio Tosi and Giancarlo Gentilini neither stopped their political activities, nor they stopped perpetrating their racist and xenophobic political statements. After the Court of Cassation’s sentence,

² In accordance with Italian law, the stay of execution is a illegal principle regulated by Article 163-168 Criminal Code: guilty persons, sentenced up to two years’ imprisonment, could benefit of a stay of execution for two or five years. At the end of this period, if the guilty has not perpetrated the same crime, the crime falls down and the judgment is not executed.

Flavio Tosi declared to journalists: “Injustice is done”³. This is particularly serious considering that Tosi and Gentilini are public figures and administrators in cities with high percentage of immigrants and where integration is a relevant issue for public opinion.

15. Moreover, the UFTDU is particularly concerned because referring national political parties have not firmly condemned racist happenings, rather they have minimized racist contents. Some major politicians have expressed solidarity to Tosi and Gentilini⁴, affirming that they simply exercise their freedom of expression. Pursuant to Article 21 of the Italian Constitution, everyone has the right to express freely his or her own thought by word, in writing and by all other means of communication. However, this right is not an absolute one and can be subjected to restrictions according to the law for the purpose of ensuring the protection of rights of others. Furthermore, the Supreme Court in criminal matters has decided that the right to freedom of expression does not justify acts or conducts that, although they manifest one’s own belief, are prejudicial to other relevant constitutional principles (such as the principle of equality) and the values protected by national and international law⁵. Also the CERD states in its Recommendation no. 15 that “*the exercise of the right to freedom of expression carries special duties and responsibilities, in particular the obligation not to disseminate racist ideas*”.

16. Unfortunately, often Italian politicians have expressed discriminatory views with respect of immigrants and this seems to be an increasing trend⁶. The previous coalition leading the Italian government (author of the periodic report under review) itself did not had a firm position against incitement to or acts of racial discrimination and there seems not to be a systematic and effective reaction against racism and xenophobia, especially when politicians are involved. A worrying and serious example of Italian political situation is racist propaganda pursued by *Lega Nord* party: xenophobic and racist ideas are used for political propaganda in order to manipulate public opinion about the negative consequences of immigration. *Lega Nord* has tried to burden immigration with several Italian problems. Following there are some examples of political posters, not exhaustive of the complex current situation:

³ “*Ingiustizia è fatta. Mi complimento comunque con quei magistrati per la velocità con cui hanno saputo, in questo caso, iniziare e portare a termine cinque gradi di giudizio in poco più di sette anni per una semplice raccolta firme che chiedeva al comune di Verona di sgombrare un insediamento abusivo di nomadi. Un procedimento che in un Paese normale non sarebbe nemmeno iniziato, ma che al contribuente italiano è costato fior di quattrini. Mi auguro comunque, pur dubitandone, che il mio caso sia da esempio a certi magistrati per fare velocemente anche i processi che riguardano i delinquenti veri e pericolosi che spesso escono dal carcere o che non arrivano a sentenza definitiva per decorrenza dei termini*”. *Il Corriere della Sera*, Page 15, 15th July 2009.

www.archivistorico.corriere.it/2009/luglio/12/Idee_razziste_Tosi_condannato_via_co_9_090712034.shtml

⁴ See for example “*Solidarity to Tosi?*” by Luca Zaia, Ministry for agriculture policy (2008-2011), Lega Nord Party – 4th September 2009.

<http://www.lucazaia.it/it/index.php?s=news&title=Solidariet%C3%A0+a+Tosi%2C+nessuno+spazio+a+certa+sinistra+confusa+e+sobillatrice>

⁵ See Supreme Court, Section I, Judgment of 28 February 2001, no. 341

⁶ See Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 13-15 January 2009, Strasbourg, 16 April 2009.



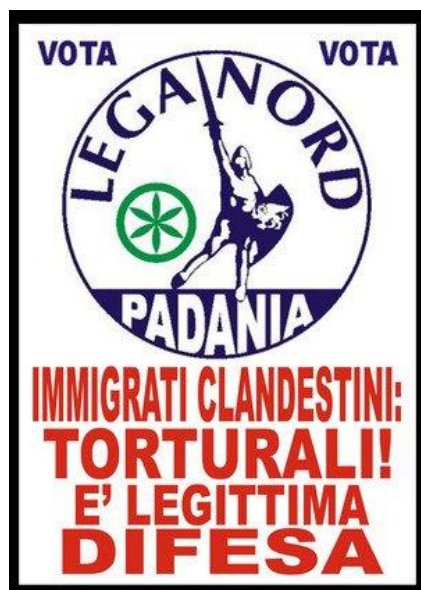
“We stopped invasion” – Lega Nord, 2009
<http://www.leganord.org/ilmovimento/manifesti.asp>



“They were subjected to immigration... now they live in Indian reservation! – Think about it.” – Lega Nord, 2008 Elections
<http://www.leganord.org/ilmovimento/manifesti.asp>



“Guess who is the last one? For rights on house, job and public health. Get a move on!” – Lega Nord, Since 2007 up now
<http://www.leganord.org/ilmovimento/manifesti.asp>



“Vote for *Lega Nord*. Illegal immigrants: torture them! It’s self-defence!”

Lega Nord, August 2008

<http://www.leganord.org/ilmovimento/manifesti.asp>

17. Despite sentences against *Lega Nord* exponents, some members have intensified the use of racist and xenophobic discourse in the political arena, especially against non-EU nationals and other minority groups, such as Roma and Sinti. For a practical evidence of racist political discourses see the following link:

http://www.youtube.com/watch?v=3D66wM4v9_o

From this point of view, migrants, Roma and Sinti and other minority groups are presented as a threat to public health and public order and the preservation of national or local identity, resulting in some cases incitement to racial violence. Anyway, the political

situation is serious not only concerning *Lega Nord* but also concerning other radical parties, like *Forza Nuova*, *Casa Pound*, *Fiamma Tricolore* and others⁷.



“For *Lega Nord*: immigration is simply a matter of public order. It could be regulated. For *Forza Nuova*. Immigration is a loose of ethnic and cultural identity. It must be blocked. Now you know the difference, so you cannot be mistaken anymore.” – Forza Nuova, August 2009

<http://www.forzanuovapescara.net/manifesti/251-forza-nuova-lega-nord-linequivocabile-differenza.html>

⁷ For practical examples see programmes of cited parties at the following links:

<http://www.casapounditalia.org/images/unanazione.pdf>

http://www.youtube.com/watch?v=RydUru18d5I&feature=player_embedded

<http://www.fiammatricolore.com/files/files/manifesto%20immigrazione1.pdf>

<http://www.forzanuova.org/video/fiaccolata-di-forza-nuova-massa-casa-lavoro-asili-prima-agli-italiani>

However, the authors of these posters and discourses are not prosecuted even if the expressed ideas are clearly racist and discriminatory and, in some cases, incite to racial hatred and violence, violating previously cited Italian law (Law No. 654/1975 and Law No. 205/1993 – Legge Mancino).

18. Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, expressed his concern about Italian situation regarding racial discrimination in

his report of September 2011, stressing the lack of any improvements in the fight against discrimination in political discourse⁸. During his visit to Italy on 13-15 January 2009 corresponding to local electoral campaign period in several Italian cities, there was a significant presence of electoral material – notably posters on walls and vehicles – against immigrants and especially against Roma⁹.



“Milano Gypsytown with Pisapia

- + Gypsy encampments
- The biggest mosque in Europe

Vote for Letizia Moratti” - Lega Nord, Administrative Election 2011

<http://www.leganordgussago.org/?p=1801>

19. In addition, in accordance with Article 68 par. 1 of the Italian Constitution, members of Parliament cannot be prosecuted because of their opinions during their parliamentary activities¹⁰. However, this last restriction is interpreted *lato sensu*, including in parliamentary activities any kind of political activity (party and electoral meetings, assemblies, interviews, etc.). This seems to be an excessive protection for parliamentary members, legitimated in any expression or affirmation. An example occurred in May 2009, when deputy Matteo Salvini, member of *Lega Nord* Party, proposed the establishment of different sectors on buses for women, who do not feel secure because of intrusiveness and rudeness of non-EU nationals¹¹. Shortly after this affirmation, deputy Salvini took part in a ground swell against southern Italian people during a *Lega Nord*

⁸ See Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 13-15 January 2009, Strasbourg, 16 April 2009.

⁹ In the context of the expulsions of Romanian and Bulgarian Roma from France of summer 2010, the Italian Minister of Interior expressed regret at the fact that since many Roma and Sinti have Italian nationality “they have a right to stay and nothing can be done about it”. *Il Corriere della Sera*, 21 August 2010.

¹⁰ Article 68 par. 1, Italian Constitution: “I membri del Parlamento non possono essere chiamati a rispondere delle opinioni espresse o dei voti dati nell’esercizio delle loro funzioni”.

¹¹ “[...] la possibilità di riservare le prime due vetture di ogni convoglio alle donne che non possono sentirsi sicure per l’invadenza e la maleducazione di molti extracomunitari”. *In metro posti riservati ai milanesi*, *La Repubblica*, 08 May 2009, page 4.

meeting in Pontida¹². Despite some criticism, *Lega Nord* minimized the two episodes and deputy Salvini did not have any consequence for them.

20. This discriminatory attitude of Italian politicians supported by political parties is both clearly contrary to human dignity and instrumental in promoting the general public's acceptance of policies which do not respect human rights of people concerned. In addition, it has legitimised prejudice and discrimination against immigrants among public opinion and has offset the hard work of social inclusion throughout the country. Many other human rights monitoring mechanisms share this concern: the Advisory Committee on the Framework Convention for the Protection of National Minorities¹³; the European Committee of Social Rights¹⁴; the European Commission against Racism and Intolerance¹⁵, whose next report on Italy will be presented in February 2012.

The Italian Government should be urged to give full application to the criminal provisions in force against incitement to discrimination and violence on racial, ethnic, national or religious grounds, ensuring effective and adequate sentences to the offenders and limiting the possibility to stay the execution.

The Italian Government should moreover be requested to enforce an effective implementation of the existing criminal law provisions against racist offences and racial discrimination targeting specifically exponents of political parties.

Moreover, the UFTDU recommends the Italian Government to adopt appropriate steps for the purpose of denying public funding to discriminatory or racist parties and organizations.

Finally, the Italian Delegation should be recommended to promote the implementation of the Charter of European Political Parties for a Non-Racist Society.

3. MEDIA AND RACIAL DISCRIMINATION

21. The UFTDU stressed that, what we expose in the previous paragraph regarding the alarmingly presents of xenophobic and discriminatory statements in political debates, is reflected on part of the Italian media and in particular, on newspapers and radio belonging to a well defined political area.

22. Regarding Committee Recommendation No. 22 (CERD/C/ITA/CO/15), the UFTDU considers that the Italian Government did not adopt sufficient measures to encourage the media to play an active role in combating prejudices, negative stereotypes and racial discrimination. The UFTDU is seriously concerned because Italian media, and

¹² *Salvini, coro anti-napoletani e in aula è bufera anti-Lega*, La Repubblica, 08 July 2009, page 15.

¹³ Advisory Committee on the Framework Convention for the Protection of National Minorities; Third opinion on Italy, adopted on 15 October 2010.

¹⁴ European Committee of social Rights, Decision on the merits, Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, 25 June 2010.

¹⁵ European Commission against Racism and Intolerance, Third report on Italy, adopted on 16 December 2005.

mostly newspapers and radios linked with a specific political area, reflect racist offences and racial discrimination expressed by political exponents and political parties without any filter. Moreover, newspapers and reviews often represent an instrument of political propaganda, through which they transmit specific ideas and permit the acceptance of specific policies. This is particularly serious considering the public financing of newspapers and the lack of any sanction against newspapers usual to racial discriminations (like La Padania, Libero, Il Giornale).

23. In order to accomplish with CERD Recommendations, the Italian Government underlines the importance of the approval in June 2008 of the “Carta di Roma”, an ethical and deontological code on immigration subscribed by the Consiglio Nazionale dell’Ordine dei Giornalisti (*National Council of the Order of Journalists*), the Federazione nazionale della stampa italiana (*National federation of the Italian Press*) and the High Commissioner for Refugees of the United Nations (UNHCR), aiming to provide journalists with a good conduct to serve as guideline when dealing with asylum seekers, refugees, victims of human trafficking and migrants as, *inter alia*, the use of exhaustive and unbiased information. In the 2008 the UFTDU affirmed, in its previous CERD shadow report, the weakness of the Italian prevention and sanction system and we pointed out that, despite the relevance of the Carta di Roma, few progress have been achieved. Since then the general media attitude towards immigrants has not substantially changed. The Carta di Roma in cooperation with universities and research institutes have established an Observatory in order to monitor periodically the information published on the Italian medias regarding migrants, asylum seekers, refugees, trafficking victims and minorities in order to detect discriminatory records. In July 2010 the Observatory of the Carta di Roma published his first and last bulletin “News from Babel”¹⁶, focusing particularly on the grave episode occurred in Rosarno¹⁷. The bulletin confirms that Italian media are common not to verify statements of interviewed people, especially when institutions are involved. Moreover, it shows that the language used in media developed an ambivalent trend: there is a significant tendency not to use anymore the word “clandestino”¹⁸, but at the same time some newspapers use the word “negro” (nigger).

24. A further achievement of the Observatory was the publication, in July 2010, of a report on a national research on immigration and asylum in Italian media pursued by University of Rome “La Sapienza”¹⁹. The research is based on a large monitoring focused on how Italian media dealt with, and presented, immigration and related issues during the first six months of 2008. According to this report “the research confirms the results of the statistical data of last twenty years. The representation of immigration provided by Italian media seems frozen. It seems to propose always the same ways, the same news, the same narrative styles and, in some cases, the same stereotypes. News crime are still the

¹⁶ <http://www.cartadiroma.com/blog/2010/07/notizie-da-babele/>

¹⁷ In January 2010 two immigrants were injured by some inhabitants of Rosarno, Calabria. In response, the immigrant community organized a revolt in the city center, destroying cars and garbage bins. For further information, see:

http://www.corriere.it/cronache/10_gennaio_07/rosarno-rivolta-immigrati_4649d878-fbd4-11de-a955-00144f02aabe.shtml

¹⁸ Clandestine.

¹⁹ “*Ricerca nazionale su immigrazione e asilo nei media italiani?*”, Facoltà di Scienze della Comunicazione, Università di Roma Sapienza, Roma, 3 July 2010

most frequent in newspapers and broadcast news, reaching 60% in some broadcast edition, never reached in the past. [...] In 76,2% of the study cases, foreign people appeared in news media as author or victims of crimes”²⁰. Since 2008 the general media attitude towards immigrants has not substantially changed. This report should have represented a pilot-study in view of the establishment of a Research Center of the Observatory. However, after these two publications in July 2010 the Observatory stopped its activity, leaving the study and the research without any follow-up. As it is stressed by the website²¹ of the Carta di Roma, the monitoring activities as well as of the publication of the bulletin of the Observatory, - supposed to be six-monthly – seems to be interrupted and the Observatory itself appears an empty container (there are not news published since December 2010). Therefore, the implementation of the Carta di Roma has been completely unsatisfactory. Only recently, after three years since the establishment of the code, the Carta di Roma Association was created. Several associations declared their will to take part to its activities (A buon diritto, Acli, Amnesty International, Arci, Archivio immigrazione, Asgi, Comunità di Capodarco, Centro Astalli, Cestim, Cnog, Cospe, Federazione delle Chiese evangeliche in Italia-Fcei, Fnsi, Istituto Paralleli, Lunaria, Rete G2 – Seconde generazioni, UNHCR and UNAR) but no other progress has been registered since yet, thus the UFTDU fears that the Carta di Roma Association remains only a declaratory act.

25. Furthermore, this weak implementation of the Carta di Roma and the interruption of Observatory’s monitoring activities occurred just in 2011, an *annus horribilis* for immigration issues and for the rate of racial discrimination in Italian media. The 2011 was the year of the Arab revolutions, the escape of thousands of people from conflict countries and the so-called “emergency” in Lampedusa. In fact, other media monitoring associations, like Association Lunaria²², have reported several discriminant articles and expressions²³. However, these kinds of monitoring mechanisms are not designed to prevent racial discrimination and stereotypes: they simply try to intervene by reporting violations. In addition, most of discriminatory cases are not reported to the Ordine dei Giornalisti - the authority supposed to guarantee the respect of the Deontological Code of Journalists and in charge of the opening of disciplinary proceedings - and therefore not sanctioned²⁴.

²⁰ “La signora in nero: non c’è immigrazione senza cronaca”: Ricerca nazionale sull’immigrazione e asilo nei media italiani, cit. pag. 3.

²¹ <http://www.cartadiroma.org/>

²² <http://www.lunaria.org/il-libro-bianco-sul-razzismo>
<http://www.cronachediordinariorazzismo.org/>

²³ See for example: <http://www.liberoquotidiano.it/news/782585/Nuovo-assedio-a-Lampedusa-sbarcano-286-clandestini.html>

<http://www.liberoquotidiano.it/news/706163/Lampedusa-fuoco-e-caos-Cav-la-ridar%C3%B2-ai-siciliani.html>

http://www.ilgiornale.it/roma/stuprata_e_quasi_uccisa_festa_romena/cronaca_roma-violenza-stupro-violenza_sessuale-romeni/11-08-2009/articolo-id=373319-page=0-comments=8

²⁴ In 2011 (24th of February), the Ordine dei Giornalisti sanctioned the journalists Maurizio Belpietro (director of “Libero”) and Matteo Legnani, with respectively a “warning” and a “censorship” (restriction) for a series of articles published in 2010 which contained expressions of prejudice and intolerance against the Roma community and a violation of the articles 2 and 48 of the Professional law (L. n. 69/1963) and of art.

26. Self regulation. Although the Italian Government states in its report that UNAR has addressed the public opinion through awareness raising and communication programs with respect to the prevention of discriminatory acts, no mention has been made to the conduct of the media itself or the measures taken to prevent the dissemination of racial discrimination through media. The UFTDU points out that, even though the conduct of journalists in Italy is regulated by the Deontological Code regarding the treatment of personal data in the exercise of journalistic duties²⁵, the media should be held partially responsible for the current spread of discriminatory attitude and feelings towards immigrants. Indeed, in the event of criminal offenses allegedly committed by persons of foreign origin, the media are particularly inclined to emphasize the nationality or ethnicity and living circumstances of the suspect. There are many cases where a person of foreigner origin has been immediately indicated by the media as the author of violent crimes, and then turned out to be completely unrelated to the crime, or even the victim of it. An example on how this attitude generates distorted perceptions on younger generation is the recent case of the teenager from Turin: a 16-year-old girl reported to the police – and, therefore, to the media – that she had been raped by two Roma, giving their physical features and stressing the fact that they had a “foreign accent”. Newspapers, both national and local, gave credit to the story and to the girl’s suspicions and, according to their titles, there did not seem to be any doubt about the rapists’ ethnic origin²⁶. On that night, a group of “solidarity”, during a demonstration in Turin, set fire in a Roma camp and burned it down.

The day after, however, the girl and her brother felt guilty about what happened and confessed that she has never been raped, she was just ashamed by the fact that she lost her virginity and that her brother found her in the street half-naked.

Some newspapers (such as “La Stampa”) apologized for the emphasis they put in considering the two Roma guys guilty for the rape; others (“Repubblica”) simply let the former articles disappear from their website. This case shows how media’s irresponsibility reinforces prejudices and can sometimes incite racial violence.

27. The UFTDU considers that, self-regulation itself is not effective and has several weaknesses. First of all, the lack of a national, permanent and official media Observatory that should implement a daily monitoring mechanism of all national, regional and local media with the aim to detect discriminatory statements and report them directly to the Ordine dei giornalisti for the sanction of the journalist found to be guilty. Nevertheless, a further limit of this self-regulation framework is that even if discriminatory statements are reported to the competent authority, the weak range of the sanctions provided for a

9 of the Deontological Code (that forces journalists to respect the right of every person not to be discriminated on the base of race, religion, political opinions).

In October 2011 Paolo Granzotto has been sanctioned with a censorship by the Ordine dei giornalisti for an article published on “Il Giornale” in which he used the expression “feccia rumena” (Romanian face).

²⁵ Article 25 Law n. 675/96. Article 9 of this Code states that “*the journalist is obliged to respect the right of every person not to be discriminated on the base of race, religion, political opinions [...]*”. This provision can, in addition, be found in the Charter of duties of journalists, adopted by the national federation of the Italian press and the national council order of journalists dated July 8, 1993. Only journalist who are professionals (thus enrolled in the organization of journalists) are obliged to follow the Deontological Code. Such obligation does not exist for publicists.

²⁶ Annexes 1: article of the newspaper “La Stampa”.

violation of the Deontological Code narrows the punitive and the preventive force of existing rules²⁷. In addition, UFTDU considers necessary to remark that only journalist who are professionals, this means thus enrolled in the Order of Journalist, are obliged to follow the Deontological Code and therefore subjected to sanctions. Publicists (free lance journalists) are not subject to the Deontological Code, as they are not considered professional journalists, however, they can write on newspapers just like them.

The UFTDU considers that it is absolutely necessary to enforce the existing monitoring, reporting and sanction mechanisms in order to prevent the spreading of discriminatory statements in Italian media. The media monitoring activities should be systematically carried out at a national, regional and local level, on a daily basis. The detection of discriminatory statements should be directly and promptly reported to the competent authorities, including the regional branches of the Ordine dei Giornalisti.

Therefore, the UFTDU recommends an effective implementation of the code “Carta di Roma”, and to reactivate its Observatory, with the aim to establish a direct link between the Observatory (or other structured monitoring mechanisms) and the Ordine dei Giornalisti in order to ensure an efficient and comprehensive prosecution and sanction of journalists found to be guilty for discriminatory statements.

Moreover, it is desirable a stronger cooperation between the National office against racial discrimination (UNAR) and the Ordine dei Giornalisti in order to ensure that cases of discrimination on racial and ethnic grounds detected by the former are systematically reported to the latter.

Moreover, UFTDU recommends to provide specific and severe measures - for instance an aggravating circumstance for racial discrimination - against authors of discriminatory articles or expressions violating the code “Carta di Roma”, which risks to have merely a declaratory meaning.

The UFTDU recommends to reform the regulation of public funding of newspapers and media, so as to promote compliance with the Carta di Roma.

4. SOCIAL NETWORKS AND RACIAL DISCRIMINATION

28. Overview. It is known that, over the last few years, the use of social networks in everyday life has hugely increase. According to the statistics, 20.9 million Italians are Facebook users, and 13,2% of them is between 13 and 17 years old²⁸. The great enlargement of the Facebook community has progressively led to the proliferation of new ways of expressing individuality and sharing common interests and opinions of any kind, through “fan pages” and “groups”. Although the use of social network has developed a

²⁷ The framework sets four different sanctions, in order of the graveness of the violation: “warning”, censorship, suspension from the Order of Journalists, disbarment from the Order of Journalists.

²⁸ Italy is the 11th country in “The world’s top 15 Facebook markets in 2012”. January 2012, www.fortunecat.it

revolutionary way of worldwide communication, due to the users' feeling of limitless freedom, also encouraged by the use of nicknames, the phenomenon of racist and xenophobic contents on Facebook and other social networks is worryingly more than common.

29. There is an increasing number of Facebook (Italy) groups who promote and incite hatred, racism, violence against immigrants (e.g. "*Let's send back the illegal immigrants*", "*3 reasons why E.T. is better than an immigrant*", "*If they [immigrants] protest with sticks, we will reply with cannon shots*")²⁹. The description of the group "Against the immigrants"³⁰, available to the public and written by the user A.B., is the following: "*May all the boats sink in the Ionio sea, may all the Romanian prostitutes die from aids and all that dirty people die in workplace accidents*". Thus, there is a urgent need for defining effective tools at a national level not only to uncover and ban racist contents from the web, but also to adopt legislative measures aiming to **criminalize** the promotion as well as the distribution of racist and xenophobic material through the means of social networks. Actually, these kind of measures are laid down in the *Protocol to the Convention on Cybercrime, concerning the Criminalization of acts of a racist and xenophobic nature committed through Computer Systems*, Article. 3, par. 1, adopted by the Council of Europe in 2003.³¹ Italy signed the above mentioned Protocol on the 9th of November 2011, but has not ratified it yet. Commissioner for human rights of the Council of Europe Thomas Hammarberg expressed great concern during his visit to Italy in 2009 about some Facebook messages containing racial hatred and violence, especially against Roma people³².

30. Self-regulation. The existing control mechanisms on the inappropriate contents of social networks' pages consists in self-regulation, based on the so-called "netiquette", simply aiming to uncover the existence of illegal material in order to restrict its circulation: on Facebook, for instance, users can report any content that they find questionable or offensive, which will be allegedly removed by the social network's administrators³³. In its last report³⁴, the Italian government states that the National Office Against Racial Discrimination (UNAR) has set up a mechanism to monitor discrimination phenomena on the web in cooperation with the Postal and telecommunication Police, and that, in several cases, these findings led to a report of criminal offense being sent to the authorities³⁵. However, there is no evidence of such reports and there is still no case-law concerning anyone charged for having published racist and xenophobic contents on social networks.

31. Case-law. But who should be held responsible for acts of racism and xenophobia committed through social networks? According to Italy's most recent case-law, there is not a general duty of surveillance for Internet Providers on the users' activities³⁶, as laid down in Article 17 of Legislative Decree n. 70/2003. The Decree

²⁹See *Addendum* "Facebook groups inciting hatred, racist ideas and violence against immigrants".

³⁰<http://www.facebook.com/groups/204751719542468/>

³¹ Signed in Strasbourg, 28.I.2003.

³² CommDH (2009) 16.

³³ See <http://www.facebook.com/principles.php> and <http://en-gb.facebook.com/legal/terms>

³⁴ CERD/C/ITA/16-18.

³⁵ CERD/C/ITA/16-18, par. 182.

³⁶ Trib. Milan, Judgment 12/04/2010.

clearly states that access providers, service providers and – *a fortiori* – hosting providers are not responsible for crimes committed by internet users, unless they knew about the unlawful content. The same applies to bloggers and forum coordinators.³⁷ On the other hand, a step towards the identification of a surveillance duty on the contents of the web could be seen in a Tribunal of Milan judgment of 12/04/2010: in this case, the judges sentenced to prison some former Google Italy executives who were found guilty of violating the Italian privacy laws for not having prevented the publication on the web of a video where some teenagers were beating and mocking a Down classmate³⁸. The judgment had a great impact because it seems to state that privacy and human dignity should be protected with the same effectiveness, no matter through which means they are threatened – social network/video search engines or newspaper.

32. Besides, there are some problems in identifying and criminalizing social network users who commit the crime by posting illegal material: first of all, lies the general uncertainty whether Facebook users' virtual identity matches with their real one. On this topic, there has been some interesting case-law about the responsibility of the "virtual persona" committing crimes using Facebook and social networks: however, the judgments only concerned crimes of stalking, insult and libel³⁹.

The Italian Government should be urged to ratify as soon as possible the 2003 Protocol to the Convention on Cybercrime, concerning the Criminalization of acts of a racist and xenophobic nature committed through Computer Systems, which has been signed on November 2011.

According to the above mentioned Protocol, UFTDU recommends the Italian Government to *adopt legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the dissemination of racist and xenophobic material through computer systems, racist and xenophobic motivated insult and denial, gross minimization, approval or justification of genocide or crimes against humanity.*

Rights and duties of newspapers and on-line information providers (including social networks) should be regulated on an equal footing in order to guarantee the surveillance and monitoring of the contents posted on web pages and to give priority to substance (the respect of fundamental rights) over form.

There should be a new model of tighter cooperation between social networks and Institutions in order to effectively draft general and abstract rules for preventing and discouraging the spread of discriminatory contents through the web.

37 Court of Cassation, Judgment no. 1907, 16/07/2010.

38 Trib. Milan, Judgment 12/04/2010.

39 Trib. Monza, Judgment 02/03/2010 and Cass. Pen. Sez. VI, judgment no. 32404, 16/07/2010.

5. ANNEX

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Rome, 30 January 2012

Mr. Mario Lana
(President of the UFTDU)



5.2 Article on La Stampa

CORSO CINCINNATO LA RAGAZZA È STATA CURATA ALL'OSPEDALE SANT'ANNA

Mette in fuga i due rom che violentano la sorella

Vittima una sedicenne: caccia agli aggressori

MASSIMILIANO FEGGIO
Violentata dietro un cespuglio in corso Cincinnato. Vittima una sedicenne che stava tornando a casa. Ad aggredirla sarebbero stati due rom. L'hanno avvicinata per derubarle il cellulare, poi hanno abusato di lei trascinandola in un giardino. Poco dopo è arrivato il fratello della ragazza e li ha messi in fuga.
Una brutta storia su cui stanno indagando i carabinieri della compagnia Otre



“Li riconoscerai”

Il ragazzo ha tentato invano di fermarli: «Io li ho visti, e saprei riconoscerli secondo me vivono dietro l'Arena Rock»

fretta» hanno detto. La ragazza ha consegnato loro il telefonino. I due però l'hanno trascinata dietro due grossi cespugli. Lì hanno consumato la violenza, dopo averla immobilizzata. Uno la teneva ferma. L'altro le ha strappato i vesti-

menti riconoscerli? «Certo. Uno era alto e aveva i capelli a spazzola, indossava una felpa grigia. L'altro aveva una visina cicatrice in faccia».

I militari adesso stanno cercando di ricostruire la vicenda con grande cautela. Soprattutto andando alla ricerca di altri testimoni. Qualsiasi dettaglio, il primo a soccorrerla è stato proprio il fratello. «Ho chiamato i carabinieri e l'ambulanza. Mia sorella era terrorizzata e sotto shock» dice. Le indagini sono all'inizio. Il cellulare della sedicenne è sparito. Forse può essere rintracciato e localizzato. La giovane è stata portata all'ospedale Sani'Anna. I primi accertamenti medici confermano la violenza. Una violenza brutale. Al proprio soccorso sono stati recuperati gli indumenti della minorenne e consegnati agli investigatori per gli esami scientifici alla ricerca di eventuali tracce biologiche.

Le famiglie della zona si sono mobilitate per protestare contro i rom che vivono nella zona. Per oggi è prevista una fiaccolata contro la violenza. Ma anche di denuncia. Nel mirino l'area della Confinassa dove vivono una cinquantina di rom. «Sappiamo dove si trovano. La situazione è insostenibile».

La spesa
Il romeno si è servito ai banchi di un supermercato in lungo Stura Lazio e ha nascosto la carne nel cappello. Foto di archivio



AL SUPERMERCATO IL VALORE ERA DI 6 EURO

Nasconde nel cappello le bistecche rubate

Alla cassa paga le caramelle poi gli agenti lo bloccano

L'idea non era poi così malvagia. Un mix di fantasia balcanica con una radice - forse - partenopea. Il romeno Mihail A., 48 anni, con una serie di precedenti per furto da record, è entrato in un market di lungo Stura Lazio con l'idea di far la spesa gratis. Vestito in modo un po' originale. Da cowboy. Con un berretto western da fare invidia a John Wayne. Prima, un giro innocuo tra i banchi, poi il furto dal banco frigo di due bistecche, valore 6 euro. Nasconde nell'ampio cappello. Fase due: prelevare due tubi di caramelle e presentarsi alla cassa. Peccato che le sue manovre per trasformare il berret-

to in una torsa per la spesa non erano passate inosservate. Prima la cassiera e poi gli addetti alla vigilanza gli hanno chiesto di togliersi il cappello; lui subito non voleva ed è arrivata una volante della polizia. Gli agenti lo hanno convinto e il furto subito scoperto.

Il romeno, che vive nel campo nomadi vicino, si è giustificato in modo decisamente efficace e molto convincente: «Ho fame e avevo bisogno di cibo ma non avevo abbastanza soldi. Visti i precedenti, è stato arrestato e trasferito in carcere».

Da qualche tempo i furti di genere alimentare sono in aumento. Come lo spettacolo di gente dall'aspetto normale, molli muscoli, che, alla chiusura dei mercati, si aggirano tra i banchi per raccogliere le cose che l'indossanti andrebbero a finire tra i rifiuti. Se ne vanno via con le borse piene, a costo zero. Scene triste. E ogni giorno si aggiungono altri nuovi poveri.

5.3 Examples of racist groups on social networks