

+41 22 740 07 15



*Permanent Mission of Italy
to the International Organizations
10, Chemin de l'Industrie
Geneva*

OHCHR REGISTRY

21 FEB 2012

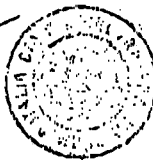
Recipients: SPD

NOTE VERBALE

- 401

The Permanent Mission of Italy to the Office of the United Nations and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, Special Procedures Division, and has the pleasure to forward, herewith attached, Italy's reply to joint letter, dated 26th December 2011, of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and of the Special Rapporteur on the human rights of migrants, concerning the attack against two Senegalese citizens that took place in Florence on 13th December 2011.

The Permanent Mission of Italy to the Office of the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 21st February 2012

Office of the High Commissioner for Human Rights
Special Procedures Division
Telefax: 022 9179006
GENEVA

+41 22 740 07 15

ITALY

MINISTRY FOR FOREIGN AFFAIRS
Inter-ministerial Committee for Human Rights
Comitato Interministeriale dei Diritti Umani

**Italy's Reply to the request for information submitted
by the Special Rapporteur on contemporary forms of racism, racial
discrimination, xenophobia and related intolerance and the Special
Rapporteur on the human rights of migrants pursuant to General
Assembly resolution 60/521 and to Human Rights Council
resolutions 7/34, 16/33, 8/10 and 17/12
of human rights"**

February 2012

+41 22 740 07 15

Italy's Reply

Further to your query dated December 26th, 2011 submitted in accordance with General Assembly Resolution 60/521 and to Human Rights Council Resolutions 7/34, 16/33, 8/10 and 17/12, Italy is in a position to supply the following information covering the shootings of two Senegalese citizens in Florence and wounding of three others Senegalese migrants in what was reportedly a crime motivated by xenophobia.

QUESTION 1

Are the facts alleged in the above summary of the case accurate?

On December 13th 2011, in the Municipality of Florence (Rifredi district), at 12.30 p.m., in Dalmazia Square, three Senegalese street peddlers were shot apparently without reason by Gianluca Casseri, 50 years old, already previously recognised as offender and member of a social centre named "Casa Pound" in the Municipality of Pistoia, who immediately fled the spot. Two street peddlers died while the third one, injured, was brought to the Carreggi Hospital in Florence.

At 3.00 p.m., in San Lorenzo Square, within the local market, the above mentioned Casseri shot again towards two other Senegalese peddlers and injured them. Afterwards they were located at the Santa Maria Nuova Hospital in Florence.

Later on Casseri, after being found in a garage by two patrols of Carabinieri Corps and State Police officers, committed suicide shooting himself to head.

QUESTION 2

Has a complaint been lodged by or on behalf of the alleged victims?

As already reported, Gianluca Casseri, in his role of offender, committed suicide after having shot and injured five Senegalese peddlers. In conformity with Art. 150 of the Code of criminal procedure, the death of the offender before any sentence discharges the related criminal incrimination.

As far as the case, several evidences have been collected by the competent authorities both from the people who were in the surroundings and the injured Senegalese peddlers, whose testimonies

+41 22 740 07 15

have to be considered as criminal complaints even if the above mentioned offences can be ordinary persecuted.

These testimonies have proved in order to precisely get the facts and the case was reported in relation only to Gianluca Casseri, due to the lack of involvement of other offenders.

QUESTION 3

Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

Due to the fact that the offence has been directly and completely attributed to Gianluca Casseri, the aim of the investigation is now to inquiry about the moral instigation to commit the offence. The State Public Attorney is going to focus the investigation on the social and cultural context in which Casseri developed his criminal and racial motivated intentions, that is the social centre named "Casa Pound" whose headquarters and members have been searched and listed in order to find evidences to demonstrate the link between the xenophobic ideas and values and the contrast to any form of integration of non citizens, also through the media and the Internet.

QUESTION 4

Please provide information about measures taken to prevent xenophobic crimes and foster mutual understanding, social harmony between citizens and non-citizen and to promote tolerance and respect for cultural diversity.

In this context to the following is pointed out that, in terms of elaboration of an *ad hoc* supplementary governance strategy for the prevention, countering and elimination of discrimination, on April 7th, 2011 an operational agreement between the UNAR (Office for the promotion of equal treatment and the elimination of discrimination on the grounds of race and ethnic origin) and the OSCAD (Observatory for protection against discriminatory acts), established in 2010 by the initiative of the Director General of Public Safety and Police Chief, Prefect Manganelli, was signed. The cooperation under way was therefore implemented both with regard to the inbound and outbound stream of information on criminally relevant discriminatory incidents and with regard to the start up of training programmes catered to law enforcement agency instructors.

As far as the implementation of judicial protection mechanisms against discrimination, it is important to point out the following the UNAR, in order to strengthen the mechanisms aimed at

+41 22 740 07 15

protecting the victims of racial discrimination, in addition to that which has already been achieved, has issued several relevant notices to the public aimed at promoting mutual understanding, respect and tolerance for cultural diversity and countering discrimination in all its forms:

a) Establishment of a network of mediators to perform the non-profit mediation activities provided for by art. 60 of Act No. 69/09 authorizing the transposition of EU directive No. 2008/52/EC, in support of the potential victims of discrimination who apply to the UNAR Contact Centre or to the territorial antennas of the observatories and of the centres interconnected with the Contact Centre.

In implementing Legislative Decree No. 28 of March 4th, 2010 (which implemented art. 60 of Act No. 69/09, authorizing the transposition of EU directive No. 2008/52/EC), the institution of mediation in civil and commercial matters was introduced in our legal system in an organic and comprehensive way. This new institution consists in activities carried out by an impartial third party, aimed at attending to two or more subjects both in pursuit of an amicable settlement for their dispute and to the formulation of a proposal for its resolution. Mediation is a highly effective instrument in resolving conflicts arising from alleged discriminatory conduct, also with regard to matters in which its application is not currently required by law. The implementation of judicial protection measures – and in particular, attempting the anti-discriminatory actions provided for by Act No. 67/2006, by Legislative Decrees No. 215/2003 and No. 216/2003, and by Legislative Decree No. 286/1998 – should only be the last resort to turn to only if it is impossible to reach a consensual settlement of the dispute. Moreover, the length of the legal proceedings and the radicalisation of the conflict that inevitably ensues as a result of such protections and actions, lessen the effectiveness of the legal remedy with regard to the possibility to reach mediation solutions based on dialogue and on the rapprochement of the parties' positions.

In order to foster resorting to mediation, thus avoiding litigation as much as possible, it is necessary to guarantee to the alleged victim of discriminatory behaviour and to the alleged perpetrator of such treatment the possibility to resort to this alternative conflict resolution mechanism free of charge, by means of a mediation body specialised in the field of fundamental rights protection and in the countering of the various forms of discrimination. The cost inevitably inherent to the mediation activity performed by specially appointed bodies, could, in fact, strongly dissuade the parties concerned from lodging a petition with them, above all whenever mediation does not constitute a precondition for the bringing of any proceedings. In this regard, it must also be noted that the law provides that the rules concerning the pauper legal aid only apply to the public mediation bodies and, in any case, the parties which do not meet the income

+41 22 740 07 15

requirements to obtain such benefit would be obliged to fully bear the financial burden associated with the initiation and the performance of the mediation process.

b) Signing of a Memorandum of Understanding with the Italian National Forensic Council¹ for the development and the systematisation of lawyers' training and refresher activities in the specific field of protection against discrimination

c) systematisation and strengthening of the "nationwide experimentation of forms of direct support for the victims of discrimination, also through the strengthening of legal counselling and the possible establishment of a solidarity fund aimed at granting an advance on the legal costs chargeable to the victims of discrimination and/or to the associations entitled to take action on their behalf according to articles 4 and 5 of Legislative Decree No. 215/2003".

Lastly, a cooperation agreement with the Communications Regulatory Authority (AGCOM) and the relative Regional Committees for Communications (CORECOM) for the monitoring of racial discrimination phenomena in the media is under consideration.

With regard to the consolidation of the knowledge of the phenomena linked to racial discrimination the establishment of a research centre named CERIDER (Research Centre on Ethnic and Racial Discrimination) has been scheduled, which, in association with the UNAR Contact Centre and the national Network of Observatories and the regional centres pursuant to art. 44 of Legislative Decree No. 286/98, is to monitor xenophobia and racism phenomena in the various regions through the creation of designated reference indices. With the decision to contract Rep. UNAR 574 dated July, 26th 2011, a Public Notice has been consequently issued for the creation of a project for the establishment and the operation of a research centre to monitor the phenomena of xenophobia and discrimination on grounds of race and ethnicity (CE.R.I.D.E.R.) (Amounting to € 250,000.00).

Moreover, within the scope of the NOP ESF Convergence Objective 2007-2013, AXIS D, Objective 4.2, UNAR has initiated a series of actions which can directly support the promotion and the launch of Anti-discrimination Territorial Centres in the Regions Convergence Objective. The following actions are worth of special mention, which only recently (that is, as of last June) have been entrusted to UNAR's direct management (previously they had been outsourced to ISFOL), and a list is given below of the activities currently under way and those scheduled for each action:

¹ The National Forensic Council - which is governed under the Italian legal system by Royal Decree Law No. 1578 of November 27th, 1933, and by Royal Decree No. 37 of January, 22nd, 1934 - is the institutional representative body of the Italian Bar and the expression of the whole forensic class.

+41 22 740 07 15

- *Action 1. Identification and diffusion of specific intervention strategies aimed at overcoming the stereotypes relating to the differences resulting from race, ethnic origin, religion, personal belief, disability, age, or sexual orientation;*

- the creation of an Inter-regional Research Centre against all forms and causes of discrimination (amounting to approximately € 550,000.00 over a period of two years).

In addition to the abovementioned counselling services for the specific factors of discrimination linked to disability, religion, age, personal belief, and sexual orientation that will be operational as of next September, and to the research on the monitoring of discrimination phenomena in the media, a proper Community-wide publication procedure will be issued for the activation and management of a database on discrimination on grounds of race or ethnic origins, religion, personal belief, disability, age, sexual orientation, and gender identity interconnected with the UNAR Contact centre and the network of territorial centres and observatories against all forms and causes of discrimination (amounting to approximately € 1,000,000.00 over a period of two years).

Furthermore, the activities planned within the scope of the other three strategic actions directly managed by the Department and UNAR since 2009 are also worth mentioning:

- *Action 5. Objective 4.2 "Awareness-raising actions and diffusion of the benefits deriving from strengthening interventions for the discriminated groups catered to the associations, the non-governmental organisations, and the institutional, economic and social partnerships"*

In this context in particular, there are two Community-wide calls for proposals:

- creation, in association with the competent Office for Equality and Equal Opportunities, strategic interventions and Communication, of a public information campaign on the prevention and countering of discrimination (amounting to approximately € 1,300,000.00 over a period of six months);

- realisation of awareness raising actions targeting the schools (amounting to approximately € 600,000.00 over a period of two years).

QUESTION 5

Please provide specific information on steps taken to implement recommendations of the Committee on the Rights of the Child (CRC/C/ITA/CO/3-4) regarding the adoption of a National Action Plan against Racism and the strengthening of the mandate of the National Office Against Racial Discrimination.

In order to compile a National Action Plan against Racism an ad hoc Working Group has been created in 2010 with the primary support of the Presidency of the Council of Ministers – UNAR

+41 22 740 07 15

– and the Ministry of Foreign Affairs – Inter-ministerial Committee of Human Rights (CIDU), involving all the relevant central and local administration and interested stakeholders, with the task to prepare a new National Plan of Action against all forms of racial discrimination, whose draft is under elaboration.

As it concerns the role and independence of UNAR, it should be kept in mind that last February, within the scope of the so-called "Development Decree", some members of the parliament in government made a motion to eliminate the Office. However, the parliament voted the motion down, both for the formal opposition expressed by the Government and for the strong objections put forward by many NGOs and trade union organisations, which, in substance, have ascribed this motion precisely to the "de facto" independence demonstrated by UNAR in performing the duties assigned by Legislative Decree No. 215/2003.

Moreover, in May 2011, in response to a parliamentary question (n. 410501, submitted by the Hon. Fedriga) in which the Minister of Equal Opportunities was asked to formally take action on UNAR so that a judgment given concerning a decision including discriminatory provisions issued by the Municipality of Trieste might be reconsidered, the same Minister of Equal Opportunities, in whose offices UNAR operates, officially declared the following:

"To this respect, I would like to point out that article 13 of directive 2000/43/EC, which implements the principle of equal treatment between persons irrespective of racial or ethnic origin, has provided for the designation of a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin, charged with, among other functions, providing «assistance independently» to victims of discrimination in following up on their complaints related to discrimination». In transposing this directive, article 7, paragraph 1, of Legislative Decree no. 215 of 2003 set out that the National Office against Racial Discrimination shall «promote equality and the elimination of all forms of discrimination on the grounds of race or ethnic origin in an independent and impartial manner», specifically, by formulating «recommendations and judgments on issues concerning discrimination on the grounds of race or ethnic origin, as well as proposals to amend the legislation in force» (article 7, paragraph 2, section f).

Therefore, the characteristics of independence and impartiality required by Community legislation and set out by the national regulations prevent the Minister from performing any intervention aimed at requesting a reconsideration of that expressed by the abovementioned Office within its competences.

Also the new organisation of the Office has already produced significant results, as demonstrated by the statistical data which show, for example, a significant increase in cases handled by the Office: from 373 cases dealt with by UNAR throughout 2009, the number grew to 766 cases in

+41 22 740 07 15

2010 and 1003 cases in 2011. The figures practically tripled, demonstrating how the organisational change has led to the emergence of a considerable number of racial discriminatory events that had so far remained undetected. Additional elements to note: 40% of cases was initiated by UNAR (UNAR had initiated 11.6% in 2009 and 25% in 2010); also, the number of cases initiated following evidence by third parties increased (from 10.7% in 2008 to 21.5% in 2011).

This means that in less than two years, despite a doubling in the number of processed cases, the reports by witnesses (individuals and NGOs), also doubled, confirming the authority and credibility gained by UNAR thanks to its new course.

Another relevant element confirming the effectiveness of the innovations introduced in the ongoing monitoring process of discriminatory phenomena in the media and on the Internet concerns the on-line episodes of racism, found on blogs and websites.

In this specific sector the introduction of the new organisational model made it possible to adequately and effectively monitor racist and xenophobic phenomena occurring on-line and on the internet, so that the number of reports concerning these phenomena increased from 5.4% in 2008 to 24 % in 2011.

These results, determining the removal of websites and blogs marked by xenophobia and incitement to racial hatred, have been achieved thanks to an active collaboration with the Postal Police and, in several cases, resulted in the report of criminal offence being sent to the competent authorities.

With regard to 1.01.2011 – 31.12.2011, it is hereby made note that UNAR managed 1003 preliminary investigations (799 relevant cases) with an overall increase of about 31% (over 55% compared with the relevant cases). With respect to the outcomes, it should be noticed that in 57.8% of concluded preliminary investigations UNAR intervention has positively resolved the situation, eliminating the discrimination.

QUESTION 6

Please also provide information on steps taken to consider reviewing laws and policies which criminalizes irregular stay and entry in Italy.

All the measures laid down in the so-called "security package", introduced in 2008 in the Italian legislative framework, are meant to curb criminal behaviours of individuals and no provision included therein is envisaged against any community, group or class nor is linked to any form of discrimination and xenophobia. As for the aggravating circumstances, it must be recalled that it applies to illegal migrants found guilty of a main crime. Such provision responds to the

+41 22 740 07 15

increasing trend, observed by the Italian judicial system, on the involvement of illegal migrants in organized crime that uses them as a workforce while forcing them to live in really precarious and unacceptable healthy conditions.

As far as, in particular, migrants entering in Italy without legal status, it is worth of mentioning that, besides the assistance to asylum-seekers in CARAs, as far as the other Reception Centres (CPSA, Centres for the first-aid and reception; CIE, Identification and Expulsion Centres), the assistance to migrants without legal status is legitimated by the judicial authority within the following 48 hours from the reception and can be reviewed and motivated by the *Questore* in terms of extension of the stay. The assistance of the migrant includes the full access to health-care services, cultural mediation, free legal counselling, identification, examination of the relevant applications and, eventually, repatriation, only for those who are not entitled to stay in Italy (art. 14§2 of Legislative Decree No. 286/1998).