



N. 593

Permanent Mission of Italy
UN - Geneva

NOTE VERBALE

The Permanent Mission of Italy to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, following the Letter by the Special Rapporteur on the independence of judges and lawyers No. AL ITA 2/2022 dated 28 June 2022 and the Note Verbale of this Mission No. 270 dated 9 February 2023, has the honour to transmit herewith Italy's reply.

The Permanent Mission of Italy would be grateful for kindly confirming receipt of this Note Verbale and of the attached document.

The Permanent Mission of Italy avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurance of its highest consideration.

Geneva, 24 MARS 2023



Office of the High Commissioner
for Human Rights (OHCHR)
GENEVA

ITALY



MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION

INTER-MINISTERIAL COMMITTEE FOR HUMAN RIGHTS

ITALY'S REPLY TO UN COMMUNICATION AL ITA 2/2022

March 2023

ITALY'S REPLY

Italian Authorities are in a position to provide the following information.

With regard to the procedure for the release of the property occupied by the communicant, Ms. O.E., (*Eviction*), following complaint [REDACTED] RG brought by Mr. B.A. against Ms. O.E. (the communicant) for wrongful occupation of property, the Tribunal of Venice granted Mr. B.A.'s application by order dated 04/19/2017. During the proceedings, the communicant was assisted by a defense counsel of her choice and no procedural violations emerged. Subsequently, the communicant filed an application for revocation of the release [REDACTED]. This application was rejected by the Tribunal of Venice for inadmissibility, and she was convicted of frivolous litigation.

The alleged "illegitimacy" of the release order lamented by Ms. O.E., due to alleged proximity of the relatives of the former partner to a judge of the Tribunal of Venice, is contradicted by the circumstance that the case of the release of the property was re-examined, following the application for revocation, by the Tribunal of Venice that found the case to be manifestly unfounded.

With regard to the civil proceedings for the custody of [REDACTED] the first order adopted by the Tribunal of Venice, following the complaints filed by Mr. B.E. and Ms. O.E., reunited in a single proceeding, was issued on June 14, 2017: and with it the shared custody of [REDACTED]

[REDACTED] Subsequently, Mr. B.E. brought an action under Article 337 bis of the Civil Code against Ms. O.E., [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Upon receiving the plan prepared by social services, the Tribunal postponed the proceedings until February 28, 2019. Therefore, these were not unjustified postponements as it seems to be reported in the communication under reference, but a postponement intended to verify the progress [REDACTED]

No appeal was filed against the order, although Ms. O.E.'s defense counsel was authorized to view the relevant file. It has been pointed out by the Presiding Judge of the Tribunal of Venice that in the child custody proceedings, Ms. O.E. was duly assisted by a defense counsel, Lawyer Mr. B., without any violation of the adversarial principle. Ms. O.E. also was heard in all hearings in which she participated, being able to express her views. It should also be noted that, contrary to Ms. O.E.'s assertions, the [REDACTED] orders were not taken by a single judge but by a panel of three judges and consequently the alleged "partiality" of the judge who decided the case appears unfounded, for being the same close to Mr. B.E.'s family members. Further, all measures were taken on the basis of the reports of the social services of the City of Venice, which, of course, were made available to the parties, for examination.

The assertion that in the context of the child custody proceedings, the measure of custody to the paternal grandparents was taken, outside jurisdiction, by a judge friendly to Mr. B.E.'s family, and contrary to the rulings of the Court of Appeals and the Court of Cassation that had upheld the decision of shared custody, appears to be clearly unfounded. It should be emphasized that either parent can ask the judicial authority to reevaluate decisions regarding child custody previously made, based on supervening elements. Therefore, notwithstanding the previous decision of a different sign, the Tribunal of Venice, in collegial composition, had and has jurisdiction to rule on reasoned requests for modification of previous custody orders. And the Tribunal -- it is to be reiterated, in collegial composition -- exercised its jurisdiction on the basis of in-depth reports from social services.

With regard to the criminal proceedings (*Criminal complaint*), Ms. O.E. is currently a defendant in criminal proceeding [REDACTED] as committed in Venice on January 28, 2017, and on March 19, 2017, respectively. The next hearing is set for September 27, 2023, before monocratic Judge, Ms. S.B..

Regarding the deficiencies lamented with regard to legal aid, it should be noted that Ms. O.E. is duly assisted by a legal counsel of her choice, Lawyer Mr. M.M., as appointed by the communicant herself on January 17, 2022, while the previous legal counsel of her choice, Lawyer Ms.V.C., had been appointed on October 19, 2021. Only between January 13, 2022 and January 17, 2022, Ms.O.E. was temporarily assisted by the court-appointed lawyer, Lawyer Mr. A.F, following Ms.O.E.'s generic accusations against the legal counsel of her choice. Thus, it seems clear that after the hearing held on

January 12, 2022, when Ms. O.E. was still being assisted by a legal counsel of her choice, the judge promptly proceeded to appoint a public defender because of the allegations made by Ms. O.E. against the legal counsel of her choice. Needless to say, Ms. O.E. has access to the documents in the court file, nor has there been any violation concerning the time limits for investigation or the statute of limitations for offenses.

Moreover, with regard to the alleged "disappearance" of the court file [REDACTED] which was established following a complaint that Ms. O.E. would have filed regarding an assault she suffered at the hands of her former partner (Mr. B.E.), it emerges from the information transmitted by the Public Prosecutor's Office at the Tribunal of Venice that the communicant filed a complaint on April 10, 2018 in which she asked the Public Prosecutor's Office to intervene to "block" the order to release the property. This complaint was followed by a further complaint filed by Ms. O.E.'s sister, Ms. O.A., who sent it by fax on March 7, 2022, concerning the same facts. The complaints were dismissed by the Venice Public Prosecutor's Office because they sought to intervene in measures (order for the release of the property) under the exclusive jurisdiction of the civil Tribunal. As for the alleged violence suffered by the communicant, the complaints were dismissed due to their entirely generic nature.

Against this background, it seems appropriate to point out that in the complaints filed by Ms. O.E. with the Venice Public Prosecutor's Office, she did not raise the alleged friendly relations between the judge of the Venice Tribunal and the family of her ex-partner, which, on the contrary, in the communication under reference are indicated as the cause of the abuse she suffered. The circumstance that in these complaints Ms. O.E. never denounced the alleged partiality of the judge who ordered the release of the property and subsequently ordered the custody of the children in favor of their paternal grandparents is a further confirmation of the groundlessness of the allegations.

Conclusion

We take this opportunity to reaffirm our full commitment to effectively cooperating with UNSPMHs.