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## The Role of the Equality Bodies. The Italian National Office against Racial Discriminations

### 1. The EU Directive on Racial Equality

EU Members States have been required to create laws for the promotion of equal treatment on the grounds of race or ethnic origin and in order to put into effect the principle of equal treatment between men and women since the Racial Equality Directive and the amended Gender Equal Treatment Directive came into force in 2000 and 2002, respectively.<sup>1</sup>

Fighting discrimination and enforcing legislation against discriminatory treatment is only one facet of the strategy: the EU founding treaties and directives call on Member States to endorse preventive and proactive anti-discrimination policies, by conferring their bodies specific competences in the field of equality promotion.<sup>2</sup>

There is an ample evidence that strategies based solely on litigation and court decisions would fail to promote equality and bring about a significant reduction of discriminatory practices. Most national equality bodies (many of which predate the issuing of EU anti-discrimination directives) have appraised this evidence and recognized the need for more effective strategies, integrating enforcement and development.

Some EU Member States have therefore issued laws that require public services and enterprises to uphold compulsory positive duties. The national equality bodies, in turn, may be expected to participate in the implementation process and to help monitor the compliance of affected institutions. While this strategy has proved the most effective in addressing indirect discrimination, other countries have opted instead for a softer approach, whereby the adoption of positive action measures relies entirely on the good will of stakeholders.

That is the scenario that has recently lead a few equality bodies to place additional resources in order to identify the most effective ways to prevent discrimination, promote and foster substantive equality, and possibly reduce the number of complaints.

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<sup>1</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal L 180, pp. 22–26. See also Brennan, F.: The Race Directive. *The Cambridge yearbook of European Legal Studies*, 2002–2003, 311–331; Barbera M. (ed.): *Il nuovo diritto antidiscriminatorio* (The New Antidiscrimination Law). Milano, 2007, 6; Howard, E.: *The EU Race Directive. Developing the Protection Against Racial Discrimination within the EU*. London, 2010.

<sup>2</sup> On the principles of equality and non-discrimination in general see: Vandenhoe, W.: *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies*. Oxford, 2005.

## 2. Several Typologies of Equality Bodies

Most Member States responded to the EU directives either by creating new bodies for the promotion of equality, or by increasing the powers of any existing ones.<sup>3</sup> A few Member States (Belgium, Cyprus, Sweden, Ireland and the Netherlands) have exceeded the requirements of Directive 2000/43/EC by creating equality bodies in charge of all aspects of discrimination covered by EU anti-discrimination laws as well as more general human rights issues. The minimum Directive requirement is for the bodies to be able to provide independent support to discrimination victims, carry out independent surveys of discrimination issues, publish unbiased reports and bring forth relevant recommendations.

Equality bodies in the Member States include Labour Inspectorates, Commissions and Ombudsmen, which may be called on to share the tasks defined by the Directive. In Greece, for instance, the Labour Inspectorate is in charge of equality promotion in the employment field, while the Ombudsman is tasked of dealing with non-employment matters, issuing reports and making recommendations as needed.<sup>4</sup>

It should be now apparent that while equality bodies are entitled to provide legal counsel to individual discrimination victims, they can only support a limited number of cases before the courts. Factor of choice include the strategic importance of the legal point in question, the financial and human resources of the equality body, and the availability of other sources of support for the victim, for instance from associations or trade unions. A number of equality bodies overtly aim to exclusively support strategic litigation. In addition, a few equality bodies will provide informed opinions—at the request of individual of legal persons—as to the compliance of a given practice with national anti-discrimination laws; in most countries such opinions are not legally binding, but provide a recognised standard of good practice. Individuals wishing to obtain a legally binding decision will thus have to pursue the matter before the courts.

In some Member States, greater focus is placed on promoting equal opportunities and preventing discrimination rather than providing legal support for individual cases. This is the case of the Finnish Ombudsman for Minorities, which deals with a number of awareness-raising initiatives.

Funding is a major limiting factor for the efficacy of an equality body, and significant differences in financial and human resource allocation have been observed throughout the Member States. The presence of federal and regional government structures in some Member States can further affect a body's work, to the point of rendering it powerless to act on matters outside its own specific area of competence.

## 3. The Italian Office Against Racial Discrimination

There were approximately four millions documented non-nationals residing in Italy on the 1<sup>st</sup> of January 2010.

<sup>3</sup> The European Network of Equality Bodies (EQUINET), established in 2007, brings together 33 member organisations from 28 European countries. Equality Bodies were established across the Member States of the European Union to promote equality and to combat discrimination in the areas covered by the EU Equal Treatment Directives; <http://www.equineteurope.org>

<sup>4</sup> Ammer, M.—Crowley, N.—Liegl, B.—Holzleithner, E.—Wladasch, K.—Yesilkagit, K.: *Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC*. 2010, pp. 64 ss.

Nearly half of these figure come from elsewhere in Europe and nearly a quarter from Africa. Romanians, Albanians, Moroccans, Chinese and Ukrainians are the largest groups.

Most of them work in the services sector (53.8%), but with substantial numbers also in the industry (35.3%), and in the agriculture (7.3%). More than 80% are employed in small businesses. The vast majority of migrant workers are employed in low-skilled and low-paid jobs, usually as unskilled workers, construction labourers, farm labourers, domestic help, waiters, cleaning staff, and care workers for the elderly. Migrant women are concentrated in domestic work and in care-provision.<sup>5</sup>

Italy created the National Office against Racial Discrimination UNAR in 2003, in response to the EU Race Directive that obliged member states to designate a body for promoting equal treatment irrespective of race and ethnicity.<sup>6</sup>

The Office is under the Department for Equal Opportunities of the Presidency of the Council of Ministers. The Office is intended to be a reference point for people who claim to be victims of racial and ethnic discrimination, as well as an institutional body to monitor the effectiveness of instruments for the protection of equal treatment. The UNAR has a staff of civil servants and external consultants, including lawyers, judges, and experts in the social sciences. It works in co-operation with trade unions and business associations to promote positive action through training courses, information campaigns and the promotion of codes of conduct in the workplace. The UNAR is also supposed to provide information and advice to policy makers in order to assist them addressing racial discrimination.

The National Office Against Racial Discriminations is starting a new program of actions to be implemented at the national level, thank to a joint effort of Regions and local authorities, in order to create an integrated system to prevent and contrast racial discriminations.

The first main action concerns the transformation of the existing Call Centre Service into a web-based Contact Centre with access for potential victims or witnesses of discriminations, who will compile a form in their own language which will be immediately processed.

A second field of intervention refers to the conversion of the current UNAR Office in UNA, National Office against Discriminations (i.e. not only discrimination on racial or ethnic grounds) is currently under consideration.

With reference to regional centres provided for by Legislative Decree No. 286/1998, Art. 44 para. 12, UNAR started on July 2005 a national monitoring over all existing centres together with National Coordination Body for Social Integration Policies for Foreign Nationals (NCB), set up within the National Council for the Economy and Labour (CNEL). This action contemplates to create a national and permanent network among these centres in order to promote the dissemination of data and remedies concerning discriminatory offences. While using data from regional centres, which contribute to have a local understanding of the phenomena, UNAR can give a technical advice to victims of racial or ethnic discriminations. In recent years—according to the monitoring—the number of regional centres has increased, particularly in the Centre and in the South of Italy.

<sup>5</sup> Caritas Migrantes: *Immigrazione, Dossier statistico* 2010, pp. 6 ss.

<sup>6</sup> Article 7 of the Council of Ministers' Legislative Decree 215/2003 establishing the National Office against Racial Discrimination (UNAR). Cfr. Decreto legislativo 9 luglio 2003, n. 215 Attuazione della direttiva 2000/43/CE per la parità di trattamento tra le persone indipendentemente dalla razza e dall'origine etnica (Published in Gazzetta Ufficiale n. 186 of August 12, 2003) <http://www.unar.it/>.

#### 4. The Functions of UNAR

The intersectionality of race, gender, religion and culture is explicitly pointed out in the 215/2003 Decree. Article 1 defines the purpose of UNAR as enforcing equal treatment regardless of race or ethnic origin and dealing with “*both the differential impact that similar forms of discrimination can have on women and men and the existence of forms of racism with a cultural and religious character*”. As a governmental measure following EU Directive 43/2000/EC, UNAR has been unanimously welcomed by civil society organizations involved in anti-racism campaigns.<sup>7</sup>

The main tasks of UNAR are:

- to promote measures aiming to prevent or assuage disadvantageous, race- or ethnic origin-related situations;
- to spread information about protective measures, raise awareness and implement information/communication campaigns;
- to carry out studies, research and training and to share expertise with relevant associations and institutions, specialised research units and NGOs with a common aim to develop guidelines for contrasting discrimination;
- to provide jurisdictional and administrative support in undertaking proceedings to people who report being the target of discriminatory behaviours;
- to carry out enquiries into the existence and extent of discriminatory episodes, with respect for the functions and prerogatives of the judicial authorities;
- to promote the adoption by public and private bodies (particularly those enrolled in the register) of relevant positive measures aiming to avoid or dampen situations of disadvantage related to race or ethnicity;
- to spread knowledge about the means of safeguard currently available, possibly by informing public opinion about the principles of equal treatment and by running information/communication campaigns;
- to draft recommendations and reviews on issues relevant to race and ethnic discrimination, along with proposals towards modifying the current legislation.

The national equality body UNAR published a guideline on how to report websites and on-line materials that have discriminatory contents with regard to racism on the Internet. UNAR reports the website to the police in order to start a legal action; otherwise, it acts directly adopting the most appropriate measure, if the contents of such websites are considered to violate criminal law.

The National Office for Racial Antidiscrimination compiles an annual report for the Parliament and the President of the Council of Ministers on the work carried out and promotes studies, research, training courses and exchanges, in collaboration with the associations and bodies enrolled in the register, with other non-governmental organisations operating in the same sphere and with the institutes specialised in gathering statistical data, also for drawing up guidelines in the battle against discrimination.

The Office has created a Register of associations working against discrimination and cooperates with them in providing legal assistance and support to victims.

Associations and bodies promoting social integration and fighting discrimination are entitled to proceed according to Art. 5 of Legislative Decree No. 215/2003; authorisation is

<sup>7</sup> UNAR, Relazione al Presidente del Consiglio dei Ministri sull'attività svolta nel 2010, <http://www.unar.it>.

specifically granted to associations and bodies recognised by the Inter-ministerial Decree issued by the Minister of Labour and Social Policies and the Minister for Equal Opportunities on 16th December 2005 and published on the Official Bulletin of the Italian Republic on 12th January 2006.

At present, nearly four hundred associations and bodies are included in the Registry of the Ministry of Labour and Social Policies. The minimum entry requirements for registration are: a) establishment of the body by public or private deed at least two years prior two registration; b) two-year continual track-record in promoting social integration and intercultural education; c) publication of a biennial balance sheet.

A Free Call Centre is available in different languages to offer support to victims who have often difficulties to afford the costs of legal assistance. It also provides during the proceedings, oral or written information, advices and observations regarding discriminatory acts or behaviours, and encourages informal conciliatory activity, providing solutions for the eradication of discriminatory situations, also through the creation of a network of Territorial Anti-discrimination Points.

The Italian authorities have indicated that most of these complaints concerned employment, housing, access to public services and relations with the police and that none of them has resulted in the opening of judicial or administrative proceedings so far.

The last UNAR Report (2010) has shown that the largest number of discrimination concerns mobbing, “access to work” and “working conditions”.

The issue of access to work relates principally to the channels through which private work is offered. This is not always an obvious form of discrimination, especially with regards to offers of temporary work presented by work agencies, or in the recruitment of personnel and the capacity to manage, or mediating actions of unequal treatment in apparent respect of the law.

An initial screening is often carried out at the telephone interview stage, based upon the caller’s accent. In other cases, candidates are turned down following a request for a photograph or for personal information, as was customary for Italian citizens.

The other aspect of discrimination in the working environment relates to working conditions. Often foreign workers are subjected to harassment in the work place that can manifest itself in the forms of verbal harassment (offence, defamation and insinuation) and physical harassment in the form of mobbing (maltreatment over a long period of time).

The UNAR highlighted that discrimination suffered by immigrants in access to and use of health services are of three types: 1) bureaucratic difficulties (sometimes immigrants are requested to meet additional conditions not requested to Italians); 2) difficulties in access to specialists medical examinations and 3) they encounter problems when dealing with medical personnel and nursing staff.

With regard to the housing, a common theme can be identified which binds relevant cases together: the problems of relationships between neighbours or the rental conditions imposed by the property owner. Different complaints pertaining to episodes involving the police have been reported to UNAR. This is a very tricky issue. The police are the main actor in managing immigration, both in regards to entry into the country and control activities within the territory.

UNAR case-analyses highlight the difficult relationships between immigrants with a poor command of the Italian language, as well as the fact that a person’s skin colour is often regarded by the police as a discriminating factor.

Discrimination episodes also seem rife in private companies supplying services. Conflict has arisen between the management and immigrants about the access to and use of

bars, nightclubs and restaurants: immigrants' expectations for services, food and leisure are often disregarded by the management, or not met to the same quality standards as Italian citizens'.

At the moment, the Office, in its few public statements, in general has considered Roma issues as a priority.

A very recent problem is that one of the adoption of formally ethnic-blind rules or policies that in practice mostly affect members of Romani communities, and are developed out of political debates where prejudice against the Roma is evident. This can be observed in several policies at both national and local level, ranging from measures concerning free movement of EU citizens (in relation to migration flows of Roma from Romania) to a mass of urban policing initiatives developed in a number of municipalities.

Wide space has been devoted to Roma issues in the Office's reports to the Parliament. The Office has also implemented a sensitization campaign on discrimination against persons of Romani ethnicity, and has participated (although in an informal capacity) in following a few critical situations. However, it is hard to identify a clearly defined approach. Given the high intensity of Roma-related conflicts, the Office's policy easily comes across as passive; this in turn might cast doubts over the Office's bonds of loyalty to the executive, especially regarding manifestations of anti-Romani hostility that have been substantially backed up by political forces.

### **Concluding Remarks**

After its institution, the new National Office Against Racial Discriminations started a number of initiatives aimed at rising awareness (seminars, public relations actions), some of which has a relevant impact. According to the first yearly reports, the office has obtained a good degree of visibility, and this has also been accompanied by an increasing attention for antidiscrimination issues in legal scholarship. More problematic is the issue of dissemination with regard to the grounds of discrimination which are out of the competence of the new office, since the absence of a specialised body leaves implementation of dissemination to ordinary authorities which until now seem to have a quite passive attitude.

The level of independence of the anti-racist body required by the EU Race Directive has been criticised. The Italian UNAR anti-racist body is placed under the Department of Rights and Equal Opportunities within the homonymous Ministry which depends on the Presidency of the Council of Ministers. The Director is appointed by the Prime Minister. This institutional configuration makes UNAR greatly dependent on the government's political preferences and its work affected by changes in government. Thus, UNAR has no institutional autonomy and operational independence as Directive 43/2000/EC prescribes.

It is obvious that UNAR is limited by funding and power. However it offers an efficient service which can bring forth unjust cases of race and discrimination.