

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

ITALY, Situation as of 1 December 2004

General Overview

Preliminary Note: this table is accompanied by an explanatory note.

COUNTRY: ITALY	Constitutional provisions	Specific legislation	Criminal Law	Civil and Administrative Law
Norms concerning discrimination in general	Yes, Article 3	Yes, Sections 43 and 44 of Law Decree No 286 of 25 July 1998 and Act No 216 of 9 July 2003.	Yes, Acts Nos. 645 of 1952, 654 of 1975 and 205 of 1993.	Yes, especially in labour law, prison law, law on education, etc.
Norms concerning racism	Yes, Article 3	Yes, Sections 43 and 44 of Law Decree No 286 of 25 July 1998 and Act No 216 of 9 July 2003.	Yes, Acts Nos. 645 of 1952, 654 of 1975 and 205 of 1993.	Yes, especially in labour law, prison law, law on education, etc. Two recent laws providing for the commemoration of the Holocaust should also be mentioned.
Relevant jurisprudence	No.	It would seem that the Court of Cassation has not yet given any rulings in this area. However, there have been some interesting	Yes, Court of Cassation, 29 March 1985 and Court of Cassation, 16 January 1986.	

EXPLANATORY NOTE

ITALY / GENERAL OVERVIEW

As in other European countries, awareness of the migration phenomenon and of the attendant increase in discriminatory behaviour in general and racial intolerance in particular has grown in Italy over the last few years¹. Anti-racism organisations working to promote positive action with regard to recognition of foreign citizens have steadily increased in number and influence. As a result, there has been no shortage of new legislation, thus filling a major gap in the Italian legal order².

In 1998, the Italian legislature undertook a wide-ranging reform of the country's immigration laws. It took this opportunity to tackle head-on the issue of discrimination "on racial, ethnic, national or religious grounds". It accordingly introduced a new general legal remedy known as "civil action against discrimination" to put an end to discriminatory behaviour and secure the removal of its effects and compensation for the injured party. This new protective instrument is relatively broad in scope but is still little used. The few decisions on the merits handed down so far indicate certain difficulties of interpretation and implementation. This legislation was supplemented in 2003 by a law transposing the 2000 European directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (see note on specific legislation).

In addition to this specific legislation, there are a number of criminal-law provisions punishing discriminatory and racist behaviour which have not been repealed by the new legislation (see note on criminal law).

Apart from the specific legislation mentioned above, the other branches of law, however, provide little ammunition against racial discrimination or other outward forms of intolerance. The only provision accompanied by effective penalties seems to be the ban on discriminatory acts in labour law, whose importance is destined to decrease, however, owing to the enactment in 2003 of new legislation transposing the 2000 European directive on equal treatment in employment and occupation.

Lastly, it must not be forgotten that Italy is party to several international instruments which set out to combat various forms of discrimination:

- United Nations Convention on the Elimination of All Forms of Racial Discrimination, of 21 December 1965;
- UNESCO Convention against Discrimination in Education of 14 December 1960;
- Discrimination (Employment and Occupation) Convention (n° 111) of the ILO of 25 June 1958.

Constitutional Law: Italy

Preliminary Note: this table is accompanied by an explanatory note.

Constitutional provision	Scope	Relevant jurisprudence	Remarks
Article 2 (Guarantees the inviolable rights of the individual).			
Article 3 (Principle of equality)	All citizens are invested with equal social status and are equal before the law, without distinction as to sex, race, language, religion, etc.	Constitutional Court Nos. 120 of 1967, 104 of 1969, 215 of 1983 and 490 of 1988: the principle of equality applies to foreigners when the protection of the inviolable rights of the individual is concerned.	
Article 10 (2)	The legal status of foreigners is regulated by law in conformity with international rules and treaties.		
XIIth final provision.	Ban on the reconstitution of the fascist party.		Act n° 645 of 1952.

EXPLANATORY NOTE

ITALY / CONSTITUTIONAL LAW

Although the Italian Constitution of 1948 is a "long" one, it refers to racial discrimination only in the general clause on equality in Article 3, which states that "All citizens are invested with equal social status and are equal before the law, without distinction as to sex, race, language, religion, political opinions and personal or social condition".

This provision has played a central role in checking the conformity of laws with the Constitution, but there is no case-law on the subject of racism.

It must, however, be stressed that the Constitutional Court has affirmed³ on several occasions that the reference in this clause to "citizens" must be interpreted not in the literal sense, but in the light of other constitutional provisions, i.e. Article 2 and Article 10 (2).

The first of these articles guarantees the "inviolable rights" of the individual, irrespective of nationality. The second stipulates that the legal status of foreigners is regulated in conformity with international rules and treaties: this implies a reference

to Article 14 of the European Convention on Human Rights, which prohibits any discrimination in the enjoyment of the rights and freedoms set forth in the Convention.

In this context, it may be deduced that the principle of equality applies equally to foreigners as far as their fundamental rights are concerned.

A further constitutional clause which has played a role in the battle against racism and intolerance is the XIIth final provision which prohibits the reconstitution of the fascist party. In order to implement this ban, criminal law provisions were adopted in 1952 which forbade the setting up of fascist organisations or the defence of fascism. These provisions expressly refer to certain racist demonstrations (see explanatory note on criminal law).

Specific legislation: Italy

Preliminary Note: this table is accompanied by an explanatory note

Source	Scope	Sanction	Relevant jurisprudence	Remarks
Sections 43 and 44 of Legislative Decree No 286 of 25 July 1998 (“Consolidated text of the regulations on immigration and the status of foreigners”).	The discrimination must be related to “race, skin colour, ethnic origin, nationality, or religious beliefs and practices “. General scope. A non-exhaustive list of the targets/potential perpetrators of discrimination covers civil servants, employers and all those offering goods or services to the public. Discrimination is prohibited insofar as it infringes “human rights” and	Under the decree victims may bring a “civil action against discrimination” to obtain a court decision ordering the perpetrator of the discrimination a) to cease the discriminatory behaviour; b) to remove its effects; and c) to pay damages, including non-pecuniary damage. Failure to comply with the judge’s order carries a prison sentence of up to 3 years.	Some decisions by trial courts (Florence, December 1999, Milan, 30 March 2000, Bologna, 6 July 2000, Reggio Emilia, 2 November 2000). These decisions highlighted certain difficulties of implementation related to the burden of proof and the assessment of non-pecuniary damage.	Universally welcomed, this new legislation is unlikely to come up to expectations owing to the lack of bodies responsible for ensuring its practical application. Little use has been made of it so far.

	“fundamental freedoms”.		
Act No 216 of 9 July 2003 transposing Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin”.	Only discrimination based on “race or ethnic origin“ is prohibited. The scope covers the employment and social services field, including housing and health. The definition of discrimination also includes “indirect discrimination”.	Civil action against discrimination (see above, same column), with some clarifications as to the burden of proof.	There may be some problems of co-ordination between this Act and the 1998 decree when it comes to applying it in practice.

EXPLANATORY NOTE

ITALY / SPECIFIC LEGISLATION

Italy recently enacted two specific legislative instruments to combat racial discrimination. These are Sections 43 and 44 of Legislative Decree No 286 of 25 July 1998 (“Consolidated Immigration Act”)⁴ and Act No 216 of 9 July 2003 transposing Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of race or ethnic origin.

1. Sections 43 and 44 of Legislative Decree No 286 of 25 July 1998

1.1 Definition of discrimination

The definition of “discriminatory behaviour” contained in the decree is very broad. It covers “any behaviour which leads directly or indirectly to a distinction, exclusion, restriction or preference based on race, colour, descent, national or ethnic origin, or religious beliefs or practices, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social and cultural fields and in any other field of public life” (Section 43.1).

Despite the incorporation of this text into the legislation on immigration, the protection offered by the provisions in question does not apply solely to immigrants from outside the EU, but, more generally, to all those who are victims of discrimination on the grounds set out therein. Indeed, the last paragraph of Section 43

specifies that protection shall also be afforded to Italian citizens, stateless persons and citizens of other EU member states who are in Italy.

The prohibition does not cover all discriminatory treatment on grounds of race, ethnic origin or religion: the treatment in question must have infringed the victim's "human rights or fundamental freedoms". The legislators probably wanted to remain as faithful as possible to the notion of discrimination used in the international instruments and conventions to which Italy is a party. Some commentators, however, underline the unduly restrictive nature of the definition and advocate a broad interpretation on the part of the courts⁵.

The definition of discrimination given in this legislation equates intentionally discriminatory behaviour and behaviour whose effects prove discriminatory without any specific intent on the part of the person responsible. The provision also seems to cover in principle both "direct discrimination" and "indirect discrimination", ie behaviour that draws distinctions based on criteria which are in theory neutral but which, in practice, are liable to cause unfair discrimination. In the view of some commentators, however, indirect discrimination is prohibited only if it takes place in the employment field (see para. 1.2, last item, below)⁶.

1.2 Presumed discriminatory behaviour ("black list")

Section 43.2 lists five categories of acts stipulated by law to be discriminatory "in all cases". To be covered by this prohibition, however, the discrimination must be motivated "solely" by the fact that the person concerned is a foreigner or belongs to a particular race or religious denomination. The list includes the acts of:

- any public employee or official who performs or fails to perform a certain action in respect of a foreign citizen;
- any supplier of goods or services to the public who sets less favourable conditions for the supply of his/her goods or services, or refuses to supply them, to a foreign citizen;
- anyone who unlawfully sets less favourable conditions for access, or denies access, to housing, education and social and public welfare services to a foreign citizen lawfully present in Italy;
- anyone who, through action or omission, hinders the exercise of a lawful economic activity by a foreign citizen lawfully present in Italy;
- any employer (or persons acting on his/her behalf) who performs an action, or engages in behaviour, that produces a harmful effect by discriminating, even indirectly, against employees.

1.3 The "civil action against discrimination"

The remedy is the "civil action against discrimination", a new special procedure introduced by the Act. Its aim is to obtain a decision from the judge ordering the person responsible to refrain from the discriminatory behaviour or any other decision which seems suitable, in the circumstances, for eliminating the effects of that behaviour (Section 44.1). It is a summary procedure with a dual function: inhibitory and reparatory.

The possibility for the judge to hand down “any other decision that appears suitable, depending on the circumstances, for eliminating the effects of the discrimination” is open to debate. It is modelled on the 1970 legislation on anti-trade union behaviour (see explanatory note / civil and administrative law, 1.1). According to the prevailing interpretation of this legislation, the judge, by his/her decision, can only remove the effects of an action already performed. In the view of some commentators, however, the new anti-discrimination provision is formulated in such a way that it would be possible to go further and ask the judge to give a decision replacing an action not performed, or performed in a discriminatory manner (eg a decision granting an applicant the housing he/she was refused or making him/her a member of an association to which he/her was not admitted)⁷.

It should be noted that the provision allowing the judge to award non-pecuniary damages against the defendant is one of the rare cases in Italian law where compensation can be claimed for non-pecuniary damage even if the unlawful behaviour is not of a directly criminal nature.

Failure to comply with the judge’s order is punishable under Section 388.1 of the Italian Criminal Code (Section 44.8), which penalises anyone who deliberately fails to comply with the decision of a court or other authority. The maximum penalty is 3 years’ imprisonment.

1.4 The procedure

No particular formalities are involved. Proceedings are initiated by means of an application (“ricorso”) lodged in person by the alleged victim with the court of the area where he/she is resident (Section 44.2). Legal assistance is unnecessary⁸. The proceedings end with a decision in the form of an “ordinanza” (Section 44.4). To prove discriminatory behaviour the plaintiff may provide factual evidence, including statistics, relating to the recruitments, work distribution, promotions and dismissals effected by the defendant (Section 44.9). If the application is well-founded, the order is immediately enforceable (Section 44.4). A summary, non-adversarial procedure is also available in urgent cases (Section 44.5). If the judge considers the urgent application well-founded, he/she issues an immediately enforceable decree (“decreto”) setting the date for a hearing, which must be notified to the defendant. After hearing the defendant, the judge issues an order upholding, amending or revoking his/her decision.

Trade unions may bring an appeal against actions or behaviour of a collective or generalised nature which they consider discriminatory without identifying any specific victims. If the judge considers the application well-founded, he/she may order the employer to draw up, together with the trade union, a plan for eliminating the discrimination (Section 44.10). In the case of undertakings receiving subsidies from the State or a region or having concluded public procurement contracts with them, the judge is also required to notify his/her decision to the public authority concerned. The latter is obliged to terminate the arrangement and may, in the most serious cases, exclude the undertaking from receiving subsidies for a period of two years (Article 44.11).

1.5 Case-law

So far, few court decisions have arisen out of the provisions of Sections 43 and 44. It would seem that the first civil action against discrimination was brought in Florence in December 1999. The court dismissed the application on the grounds of insufficient evidence⁹. This was followed by two court decisions in favour of the applicant, one in Milan on 30 March 2000¹⁰, the other in Bologna on 6-7 October 2000¹¹. These initial decisions highlighted two main difficulties of implementation:

The burden of proof. In principle this lies with the victim. Yet it is often difficult to provide proof of discrimination, as there are often no witnesses to the facts, or such witnesses as there are make conflicting statements. In the decisions of the Milan and Bologna courts, presumptive evidence and facts of common knowledge were therefore deemed sufficient. Furthermore, it is not easy to distinguish between discriminatory behaviour on the sole grounds of the person's nationality or ethnic origin and discriminatory behaviour on other grounds, which can, and must, be prosecuted by other means. It was for this reason, among others, that the Florence court dismissed the application.

Non-pecuniary damage. The Act offers no criterion for assessing such damage and therefore leaves this entirely to the judge's discretion. In the Milan court's decision, the amount of pecuniary damage was decided on equitable principles without any indication of the criteria applied. The decision of the Bologna court is more interesting: here, to assess the damage, a detailed analysis was carried out, based on the case-law relating to infringement of the right to one's own image (the case concerned the unauthorised publication of a photograph).

2. Act No 216 of 9 July 2003 transposing the EC Directive on equal treatment

The purpose of this legislation was to transpose into the Italian legal system Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of race or ethnic origin. On some important points, the directive introduces innovations in relation to the decree analysed above, while on other points it is more restrictive.

2.1 Concept of discrimination

The Act prohibits only discrimination "on grounds of race or ethnic origin (Section 2.1). Consequently, discrimination on the sole ground of a person's nationality is not covered. From this point of view, the Act is narrower in scope than the 1998 decree¹².

Unlike the 1998 decree, the Act distinguishes explicitly between direct and indirect discrimination (Section 2.1). Discrimination is prohibited in all cases, even if it is indirect.

Direct discrimination occurs where, on grounds of race or ethnic origin, one person is treated less favourably than another is, has been or would be in a comparable situation.

Indirect discrimination occurs where an apparently neutral provision, criterion or practice is liable to put persons of a given racial or ethnic origin at a specific disadvantage compared with other persons.

Harassment is also deemed to be discrimination when undesirable conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment (Section 2.3). Lastly, an instruction to discriminate against persons on grounds of racial or ethnic origin is deemed to be discrimination (Section 2.4).

It should be noted, however, that a difference of treatment which is based on a characteristic related to racial or ethnic origin shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportional (Section 3.3).

2.2 Scope

The scope of the Act is similar to that of the 1998 decree. The Act applies to all persons, as regards both the public and private sectors, including public bodies, in relation to (Section 3.1):

- Conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions; working conditions, including promotion, pay and dismissal; access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; membership of and involvement in an organisation of workers and employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Section 3.1.a) to d);
- Social protection, including social security; health-care; education; access to goods and services, including housing (Section 3.1.e)-f))

2.3 Remedies and procedure

Here too, the remedy is the “civil action against discrimination” (to which Article 4.1 of the Act refers). It is specified, however, that persons who consider themselves wronged because the principle of equal treatment has not been applied to them must establish, if only on the basis of statistical data, “serious, precise and concordant” facts from which it may be presumed that there has been discrimination (Section 4.3). If the judge considers those facts to be sufficient having regard to the principles of the Code of Civil Procedure (particularly Section 2729.1), it will be for the defendant to prove that there has been no breach of the principle of protection. Some reversal of the burden of proof is provided for, therefore, in accordance, moreover, with Directive 2000/43/EC. Here too, if the application is well-founded, the judge orders the cessation of the discriminatory behaviour or act, the removal of the discriminatory effects and the payment of damages (Section 4.4). In this latter connection, express provision is made for the judge to take into account, in assessing the damages, the fact that the discriminatory act or behaviour constitutes retaliation for an earlier complaint or an unfair response to a previous action brought by the victim to secure compliance with the principle of non-discrimination (Section 4.6).

The decree allows associations and other legal entities concerned with the fight against discrimination and the promotion of equal treatment to institute judicial proceedings on behalf of the victims of discrimination and to initiate a collective action where the victims of discrimination cannot be directly and immediately identified (Section 5.1). For this purpose, organisations must be registered with the Ministry of Labour and Social Policies and the Ministry of Equality. To be included on the register, organisations must have been established for at least one year with the sole or predominant purpose of combating discrimination and promoting equal treatment (Section 6). The Act also established an office for the promotion of equal treatment and the elimination of discrimination on grounds of race or ethnic origin, which is attached to the Presidency of the Council of Ministers and performs safeguarding, monitoring and promotional functions (Section 7).

Criminal Law: Italy

Preliminary Note: This table is accompanied by an explanatory note

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Spread of ideas rooted in racial hatred or superiority: incitement to commit or the commission of discriminatory acts for racial, ethnic, national or religious reasons.	Section 3 (1)a of Act n° 654 of 1975, as amended by Act n° 205 of 25 June 1993.		Imprisonment of up to 3 years. Additional penalties: a) unpaid community service; b) temporary prohibition from taking part in election campaigns; c) ban on attending sports events.		Thus amended in 1993, when a more precise distinction was drawn between "discriminatory acts" and "violent acts or provocation" and additional penalties were introduced.
Incitement to commit or the commission of violent acts or provocation for racial, ethnic, national or religious reasons.	Section 3 (1)b of Act n° 654 of 1975, as amended by Act n° 205 of 25 June 1993.		Imprisonment of up to 4 years. Additional penalties: a) unpaid community service; b) temporary prohibition from taking part in election	Court of Cassation 26 January 1997: where incitement has taken place, it is immaterial whether the persons targeted responded or not to that incitement.	Thus amended in 1993, when a more precise distinction was drawn between "discriminatory acts" and "violent acts or provocation" and additional penalties were introduced.

			campaigns; c) ban on attending sports events.		
Association, organisation, group or movement, the purpose of which is incitement to racial discrimination or hatred.	Section 3 (2) of Act n° 654 of 1975, as amended by Act n° 205 of 25 June 1993.	The mere participation in, or giving of assistance to, an association or organisation of this kind is punishable; the penalty is aggravated for those who promote or act as leaders of such an organisation or group.	Prison. Additional penalties: a) unpaid community service; b) temporary prohibition from taking part in election campaigns; c) ban on attending sports events; d) dissolution of the association and confiscation of its property (Section 7 of Act n° 205 of 1993).	Court of Cassation 10 January 2002: the limits set by the provisions on freedom of expression are constitutionally justified; it is an offence characterised by a specific intent (“dolo specifico”), namely the will to violate, and an awareness of violating , human dignity on the grounds of racial, ethnic or religious characteristics (see also Court of Cassation 24 November 1999)	Amended in 1993: the ban has been widened to include groups and movements and a distinction is drawn between mere participation or assistance and promoting or running such groups, etc.
External or ostentatious displaying of symbols of racist organisations; gaining access to sports events with such symbols.	Section 2 of Act n° 205 of 1993.		Imprisonment of up to 3 years.		
Acts conducive to the committing of genocide.	Sections 1-5 and 6(2) of Act n° 962	All violent acts (Section 1) and deportation (Section 2)	Imprisonment of up to 30 years.		

		of 1967. aimed at destroying a national, ethnic, racial or religious group; enforcement of measures to prevent births (Section 4) and abduction of minors (Section 5) to the same end.			
Incitement to, or publicly defending genocide.	Section 8 of Act n° 962 of 1967.		Imprisonment of up to 12 years.	Court of Cassation, 29 March 1985: defence of genocide is punishable, even if there is no danger of an actual spread of ideas in favour of genocide.	
Reconstitution of the fascist party.	Section 1 of Act n° 645 of 1952.	"Fascist party" means an association, movement or group of at least 5 persons, which pursues anti-democratic aims and uses, among other things, racist propaganda.	Prison, dissolution of the association, confiscation of its property.		
Defence of fascism.	Section 4 of Act n° 645 of 1952, as amended by Act n° 205 of	The penalty for publicly glorifying fascism is aggravated when racist ideas or methods have been	Imprisonment of up to 3 years and fine.	Constitutional Court, 16 January 1957, n° 1 and Court of Cassation, 23 May 1979: conduct is punishable	An aggravated penalty for the glorifying of racism was introduced in 1993.

	1993.	particularly extolled.		only if it is definitely likely to further the reconstitution of the fascist party or if its aim is to cause the carrying out of a political action prompted by fascism.
Abuse and defamation.	Articles 594 and 595 of the Criminal Code.		Imprisonment of up to 3 years or fine.	Court of Cassation, 16 January 1986: defamation by the press is likewise punishable if it is directed against a community (in this case the Jewish community). Jewish communities, the Union of these communities and a private individual belonging to these communities, may be victims of such defamation.
	Section 3 of Act n° 205 of 1993.	General aggravating circumstance for all offences committed with a view to discrimination, for reasons of	Sentence may be increased by up to half of the main penalty.	This circumstance prevails over any extenuating circumstance.

		ethnic, racial or religious hatred or in order to help organisations with such purposes.
	Section 1 of the Prison Act.	Equal treatment of prisoners irrespective of nationality or race.

EXPLANATORY NOTE

ITALY / CRIMINAL LAW

1. General provisions of the Criminal Code

Italian criminal law provisions to combat racism and racial discrimination are not contained in the Criminal Code, but are dispersed among special legislation, some of which has different sources and aims. This is because the Italian Criminal Code (hereinafter referred to as the "ICP") was adopted in 1931 under the fascist regime. The infamous "racial laws" adopted a few years later implemented Nazi-inspired, anti-Jewish policy in Italy.

Nevertheless, many provisions of the ICP which have a more general scope can be (and have in fact been) used to counteract manifestations of intolerance or racial discrimination.

For example, this is true of the clauses punishing abuse and defamation contained in Articles 594-595 of the ICP and in Section 13 of the Press Act¹³. In this connection, attention must be drawn to the new precedent of the Court of Cassation which, in its decision of 16 January 1986¹⁴, affirmed that the offence of defamation in the press can exist even when the defamation is directed not against one or two specific individuals, but against a community, in this case the Jewish community¹⁵. The court held that it was not necessary for the insult to be perceived by all the members of the community in question.

Other general provisions which may help to prevent some forms of intolerance or racial hatred are those which punish the insulting of an authorised religion (Article 406 ICP), desecration of a grave (Articles 407-408 ICP) and desecration, destruction and removal of a body (Article 410-411 ICP).

All the above-mentioned crimes are punishable no matter what the reasons for them (racial or otherwise). Nevertheless, according to legislative decree n° 122 of 1993, racist purposes constitute a general aggravating circumstance which applies to any offence (see below).

2. The various offences covered by special legislation and some case-law

2.1. Act n° 645 of 1952: reconstitution of the fascist party and defence of fascism

From a chronological point of view, the first of the above-mentioned special laws was Act n° 645 of 20 June 1952, the purpose of which was to implement the XIIth final provision of the 1948 Constitution which prohibits the reconstitution of the fascist party in any form.

2.1.1. Definition of "fascist party"

Section 1 of the 1952 Act defines the "fascist party" as any association, movement or group of at least five persons, which pursues anti-democratic aims characteristic of the fascist party, by engaging in certain typical forms of behaviour such as the glorification, threatening or use of violence as a means of political action, the denigration of democracy or the glorification of the representatives, principles or methods characteristic of the fascist party. This list was supplemented by Section 7 of Act n° 152 of 1975, which introduced the express notion of "racist propaganda".

2.1.2. Reconstitution of the fascist party

Under Section 2 of the Act of 1952 the mere participation in, as well as the promotion, organisation and leadership of a neo-fascist organisation, are punished by imprisonment. The sentence is doubled when the organisation is armed, paramilitary or uses violence. The Act also provides for additional penalties such as a temporary prohibition from holding public office (generally regulated by Article 28 of the Criminal Code), the dissolution of the organisation and the confiscation of its property. The latter steps are ordered by the Minister for the Interior, after he has heard the opinion of the Cabinet, when a final court decision has found that an organisation is neo-fascist in character. In an exceptional emergency, the Government may adopt these measures on its own initiative in a legislative decree which must be approved by Parliament.

2.1.3. Defence of fascism

Section 4 of the Act of 1952 defines a further offence called *apologia del fascismo* (defence of fascism): any person who advocates the reconstitution of the fascist party or publicly glorifies the representatives, principles, methods or anti-democratic aims of fascism or *racist ideas or methods* is liable to imprisonment and a fine. This explicit reference to racism was introduced by Act n° 152 of 1975. Furthermore, it should be noted that the penalty for the glorification of racism (and only for this typical form of conduct) has been increased to up to three years' imprisonment by Section 4 of a recent legislative decree, n° 122 of 26 April 1993. Moreover, the additional penalty of a temporary ban on holding public office also applies.

2.1.4. Participation in fascist or nazi demonstrations

Section 5 of the 1952 Act punishes anyone who takes part in public meetings and performs acts (*compie manifestazioni*) characteristic of the fascist party or of nazi organisations.

2.1.5. Other Additional penalties introduced in 1993

Additional penalties were introduced by legislative decree n° 122 of 1993 and Act n° 205 of 1993 which amended it, see section 5 below.

3. Act n° 962 of 1967: genocide and incitement to or defence of genocide

3.1. Acts of genocide

Act n° 962 of 9 October 1967 was adopted in order to implement the 1967 Convention on Genocide. Section 1 punishes all acts aimed at causing injury to, or the death of persons belonging to a national, ethnic, racial or religious group in order to destroy some or all of this group.

Sections 2, 4 and 5 refer to certain ways in which acts of genocide may be committed and allows for more severe penalties (deportation, limitation of births and abduction of minors). Forcing persons to wear distinctive marks or signs because of their membership of a national, ethnic, racial or religious group is punished under Section 6, while Section 7 punishes conspiracy to commit genocide, when the latter has not taken place.

3.2. Defending genocide

Section 8, which punishes anyone who publicly calls for or defends genocide, is of greater importance in everyday practice. The penalty is imprisonment of between 3 and 12 years.

See section 4 below for an interesting application of this provision.

4. Act n° 654 of 1975, as amended in 1993: various forms of racial discrimination

Italian criminal law on racism was supplemented in 1975 by a new provision, Section 3 of Act n° 654, of 13 October 1975, which authorised the ratification and implementation of the New York Convention, of 7 March 1966, on the Elimination of all Forms of Racial Discrimination.

This complex clause was recently amended by legislative decree n° 122 of 26 April 1993 on urgent measures to combat racial, ethnic and religious discrimination. This decree was adopted in order to contend with an increase in racist and xenophobic incidents for which "nazi" skinhead groups were frequently responsible. The decree was approved, with amendments, by Act n° 205 of 25 June 1993.

4.1. The racist acts in question

In 1993, the legislator wished to distinguish more clearly between two types of conduct which were lumped together in the 1975 Act. The new text of Section 3 (1) differentiates between:

- a) the spreading of ideas based on racial or ethnic superiority or hatred and the incitement to commit or the commission of discriminatory acts, on the one hand, and
- b) incitement to commit and the commission of violent acts or provocation to violence, on the other.

Both categories of acts are punishable by imprisonment if they are carried out "for racial, ethnic, national or religious reasons"¹⁶, but the offence referred to in subparagraph (b) is more serious.

4.2. Notion of discriminatory acts

No express definition of racial discrimination is contained in either Act n° 654 of 1975 or other domestic legislation. Nevertheless, it must not be forgotten that the purpose of the Act in question was to bring the 1966 United Nations Convention into force in Italy and Article 1 of this Convention contains a notion of "racial discrimination", to wit:

"any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

When the above-mentioned criminal provisions are interpreted, reference must therefore be made to this definition, which now forms part of Italian law.

4.3. Relationship with other criminal provisions

The Act explicitly states that Section 3 does not apply when the punishable act constitutes a more serious crime. In this connection, the Court of Cassation clearly stated in 1986 that the seriousness of concurrent offences must be judged exclusively on the basis of the maximum sentence prescribed in theory and not on that of their "character". Consequently, aggravated defamation covered by Section 13 of the Press Act must be regarded as more serious than the offence of discrimination to which the 1975 Act refers.

4.4. Organisations with racist aims

In 1993 an amendment was introduced into Section 3 (2) of Act n° 654 which prohibits all organisations, associations, movements or groups, the purpose of which is to instigate discrimination or violence for racial, ethnic, national or religious reasons. Mere participation in or assistance to such an organisation is punishable by imprisonment. The penalty is increased for those who promote or act as the leaders of organisations of this kind.

It should be noted that the prison sentences prescribed by this provision are shorter than those which apply to the reconstitution of the fascist party.

5. Legislative decree No 122 and amending Act n° 205 of 1993: urgent measures to combat racial discrimination

We think it might be advisable to describe some of the new, general measures introduced in 1993.

5.1. Additional penalties

The amending Act enabled courts to apply a number of additional penalties to anyone guilty of one of the offences covered by Acts Nos. 654 of 1975 or 962 of 1967. These penalties include:

a) the obligation to perform unpaid community service for a period of up to 12 weeks, after the prison sentence has been served. The details must be determined by the court in such a way as not to interfere with the work, studies or social reintegration of the convicted person. This obligation may consist in:

- the restoration of buildings defaced by racist inscriptions, emblems or symbols;
- assistance to social welfare and voluntary organisations (e.g. those assisting the disabled, drug addicts, the elderly or immigrants from non-Community countries);
- work for the purposes of civil defence, environmental protection, conservation of the cultural heritage, etc.;

This work may be carried out for the benefit of public bodies or private organisations;

- b) the temporary obligation to return to or leave one's ordinary residence at a fixed time for a period of no more than one year;
- c) suspension of the offender's driving licence, passport or other documents permitting travel abroad, for a period of no more than one year;
- d) prohibition from possessing weapons of any kind;
- e) prohibition from participating in any way in election campaigns for the political or administrative elections following conviction and, at all events, for a minimum period of three years.

5.2. New offences: use of racist symbols

Secondly, Section 2 of the legislative decree introduced two new offences. The first paragraph punishes anyone who, in public meetings, displays racist attitudes or ostentatiously produces emblems or symbols of racist organisations. The second paragraph forbids, under penalty of arrest, gaining access to sports events with such emblems or symbols.

5.3. General aggravating circumstance

Section 3 of the legislative decree also provides for a general aggravating circumstance which applies to all offences prompted by ethnic, national, racial or religious hatred or discrimination or committed in order to further the activities of racist organisations. The penalty may be increased by up to half of the main sentence and no extenuating circumstance may be taken into account.

According to statistics provided by the Ministry of Justice, the aggravating circumstances provided for by Section 3 has been applied in 57 cases from its establishment until end of 1996 (2 in 1993, 7 in 1994, 5 in 1995, 8 in 1998).

5.4. Preventive measures

Under Section 2 (3) of the legislative decree, the police may forbid a person under investigation for, or convicted of, one of the offences referred to in the Acts of 1967 or 1975 or an aggravated offence within the meaning of the above-mentioned Section 3, to enter a place where sports events are held for five years (unless that person is acquitted or discharged).

5.5. Measures against racist organisations

Section 7 of the legislative decree stipulates that during a trial for one of the offences covered by the Acts of 1967 or 1975 or an aggravated offence within the meaning of the above-mentioned Section 3, the competent court may suspend the activities of an association, movement or group which might encourage the commission of one of the offences in question.

When a final court decision has found that there is a connection between the organisation and the offences in question, the Minister for the Interior, having deliberated with the Cabinet, orders the dissolution of the organisation and the confiscation of its property.

6. Procedural aspects

It must first be noted that, under Section 6 of legislative decree n° 122 of 1993, any offence aggravated by the racist purposes referred to in Section 3, are prosecuted *ex officio*. This particularly applies to offences of racism as such and avoids the need to determine the victim of the offence (i.e. the party entitled to report an offence to the prosecuting authorities), as was required in cases concerning abuse and defamation.

The question arises only in respect of the civil law effects of the offence; in other words when it is a matter of deciding who is entitled to claim damages in criminal proceedings.

Mention must therefore once again be made of the decision of the Court of Cassation of 16 January 1986¹⁷, that the Jewish Communities and the Union of these communities (which are legal persons in Italian law), or individuals belonging to the Jewish community, may be regarded as victims of defamation in the press of the Jewish community as a whole and may initiate an action for damages.

7. Relationship between anti-racist provisions and the protection of fundamental rights

Italy has an abundant case-law regarding the compatibility of these types of offence and the fundamental right freely to express one's opinion, set forth in broad terms in Article 21 of the Constitution.

First it must be noted that the relationship between freedom of expression and the dissemination or glorification of intolerant or racist ideas was not considered in the Constitution. The only explicit restriction which Article 21 (6) places on freedom of expression is one of morality (*buon costume*): this term has, however, been interpreted narrowly by the Constitutional Court, which regards it merely as a reference to sexual morality and decency¹⁸.

Nevertheless, judicial doctrine has affirmed the existence of ultimate, implicit limits to the freedom of expression which stem from the need to protect other rights and interests guaranteed by the Constitution¹⁹. This interpretation made it possible to justify the creation of the offence of abuse and defamation, as the honour and dignity of human beings are rights protected by the Constitution (Articles 2 and 3)²⁰.

The decisions of the Constitutional Court which have the most direct bearing on the subject of this survey are those which concern defence of crimes.

In 1957, the Constitutional Court had to adjudicate on whether making the defence of fascism an offence under Section 4 of Act n° 645 of 1952 was lawful and compatible with the freedom of expression secured in Article 21 of the Constitution. The Court held that the issue had to be interpreted in the light of the XIIth final provision of the Constitution, which prohibited the reconstitution of the fascist party. It followed that, in order for such defence to be a crime, more was needed than mere defence or praise of the fascist party; there had to be some glorification likely to create a danger that the said party might be reconstituted. "Defence" had to be interpreted as "direct incitement" to perform acts likely to lead to the reconstitution of the fascist party: hence its prohibition constituted an application of the XIIth final provision of the Constitution. There was therefore no inconsistency with freedom of expression.

Similar arguments were used in 1970 to show that Article 414 (3), punishing the defence of crimes in general, was compatible with the Constitution. The Court contended that the conduct in question did not consist in a mere expression of thought or a criticism of existing criminal law, but had to amount to indirect incitement, that is it had to be likely - in its tenor - to lead to the commission of the offences it glorified. Freedom of expression did not cover such conduct, because it conflicted with other Constitutional principles, such as the need to safeguard public order and safety.

The Court of Cassation upheld this restrictive interpretation of defence as indirect incitement, in several of its decisions²¹. This view was, however, abandoned in 1985 in a case concerning the defence of genocide²².

The case is well known in Italy. During a basketball match between the team from Varese and Macabj Tel Aviv, a group of Italian supporters engaged in a vulgar display of racial hostility by exhibiting anti-Jewish placards and singing songs extolling the

holocaust. Those guilty were convicted by the court of first instance for defence of genocide and some of the convictions were upheld by the court of appeal.

The defendants appealed to the Court of Cassation and referred to the above-mentioned constitutional precedent that the defence of an offence cannot constitute a crime unless it is likely to produce the effect of indirect incitement, or in other words create the danger of the offence in question being committed. As this potential danger did not exist in this case, the offence of which the defendants were accused had to be considered impossible.

The Court of Cassation rejected this argument. While it acknowledged that, in this case, there was no real danger of acts of genocide being committed, it held that the defence of genocide cannot be treated in the same way as the defence of other offences, precisely because of the special, most unusual and "monstrous" nature of the offence which was being defended, which was not racial intolerance, but genocide, that is to say the extermination of a people. In the opinion of the supreme court, a judgment against the defence of genocide cannot be made subject to the existence of a potential danger that genocide might be committed, because this would normally be tantamount to making the offence in question impossible, or possible only in quite exceptional historical and political circumstances. According to the Court, the defence of genocide is an offence of attitude (*di pura condotta*) which is perpetrated merely through the glorification of certain behaviour and which is punished "because of its intolerable lack of humanity, the detestable cult of racial intolerance it expresses and the horror it awakens in the civilised conscience".

Lastly, it must be pointed out that there is no case-law on the constitutionality of the provisions punishing the dissemination of racist ideas or incitement to racial hatred.

Civil and Administrative Law: Italy

Preliminary Note: this table is accompanied by an explanatory note

Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
Section 15 of Act n° 300 of 1970 ("Workers' Statute")	Any agreement or act which directly discriminates against workers because of their race, religion or language is prohibited.	The agreement or prohibited act is null or invalid; if a worker has been dismissed, they may be reinstated in their post in accordance with Section 18 of Act n° 300.		
Legislative Decree No 216 of 9 July 2003 implementing	Prohibition of discrimination on grounds of religion or beliefs,	The civil action against discrimination provided for in		

Directive 2000/78/EC on equal treatment in employment and occupation.	disability, age or sexual orientation, in employment and occupation.	Article 43 of Decree No 286 of 25 July 1998 (see above, note on “specific legislation”)	
Article 7 of Act 121 of 1 April 1981 on administration of the police	The collection of information on data on citizens on the basis of race, is prohibited.	Deletion of illegal data. Imprisonment of up to 3 years.	
Memorandum n° 207 of 16 July 1986 of the Ministry of Education (<i>Ministero della Pubblica Istruzione</i>).	All those who reside in Italian territory have full access to the various types and levels of Italian schools, even if they are not Italian nationals; any hostility towards them, or reluctance constitutes a manifest breach of the civil and constitutional principles of the Italian state.		
Act n° 101 of 8 March 1989 on relations between the state and the Union of Jewish communities.	Contains many provisions to protect the Jews.		Right to rest on the Sabbath, no obstacles to religious observances in the army, etc.
Act 675 of 31 December 1996 on protection of personal data.	Processing of data which may reveal the racial or ethnic origin of a person, is subject to the consent of the person concerned, as well as to the control authority’s (Garante) authorisation.	In case of violation committed with the intention of profiting or causing harm, imprisonment is of up to 2 years. If harm is caused. Imprisonment is of up to 3 years.	

Act No 211 of 20 July 2000 establishing a “Day of Remembrance”.	Italy recognises 27 January, the date on which the gates of Auschwitz were opened, as a “Day of Remembrance” for victims of the Holocaust.
Act No 91 of 17 April 2003 establishing the “National Museum of the Shoah”	The National Museum of the Shoah was established in Ferrara as a symbolic place for preserving the nation’s memory of racial persecution and the Holocaust.

EXPLANATORY NOTE

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Labour law is traditionally the most important field in this respect. In that field, Act No 300 of 1970 was recently supplemented by Decree No 216 of 2003 implementing Directive 2000/78/EC on equal treatment in employment and occupation. There is accordingly a problem of co-ordination between the two instruments. The provisions against discrimination in other substantive fields are few in number and of little significance. Codes of professional conduct, particularly those of doctors and journalists, contain some interesting rules. Lastly, one innovation over the last few years has been the enactment of two laws concerning commemoration of the persecution of the Jews.

1. Right to work

1.1 Act No 300 of 1970 on the “Workers’ Statute”

Under Section 15 (2) of the Workers' Statute, any agreement or act aimed at political, religious, racial, linguistic or sexual discrimination is null or invalid.

The categories of acts which may not be carried out with intent to discriminate are listed in paragraph 1 of the same section, which concerns discrimination because of trade union activity. (The list is not exhaustive.) The acts or agreements in question are those which:

- make the employment of the worker subject to discriminatory conditions;

- dismiss a worker with intent to discriminate;
- discriminate against a worker in the determination of their status, duties, and with regard to changes of location or disciplinary measures;
- do them a disservice in other ways with intent to discriminate.

The penalty laid down in Section 15 for prohibited discriminatory acts is automatic invalidity. This applies to agreements of a discriminatory nature (for example a clause in an individual employment contract) or unilateral acts (dismissal, for example).

Section 18 of the Workers' Statute likewise applies in the event of discriminatory dismissal. In the decision declaring the dismissal invalid, the court orders the reinstatement of the unlawfully dismissed employee. If the employer fails to comply with this order, he is obliged to pay the worker damages.

The effectiveness of this penalty is heightened by the fact that the decision prescribing reinstatement is immediately enforceable *ipso jure*.

On the other hand the law does not offer such effective penalties for purely financial discrimination. The penal sanction of a fine and imprisonment provided for in Section 38 of the Workers' Statute applies only to certain discriminatory acts against the worker because of his trade union activity (Section 15 (1)a of the Statute) but not to other forms of discrimination which are, however, punishable under Section 3 of Act n° 654 of 1975 (see explanatory note on criminal law).

1.2 Legislative Decree No 216 of 9 July 2003 implementing Directive 2000/78/EC on equal treatment in employment and occupation

For the purposes of this legislation “equal treatment” means the absence of direct or indirect discrimination on grounds of religion, personal beliefs, disability, age or sexual orientation (Section 1). The definition of direct or indirect discrimination (in Section 2.1) is virtually identical to that used in Act 216 of 9 July 2003 implementing the EC Directive on equal treatment in general (see above, note on “specific legislation”, 2.1). Here too, difference of treatment based on a characteristic related to a person’s religion, personal beliefs, disabilities, age or sexual orientation does not constitute discrimination where, by reason of the nature of the particular occupational activity or of the context in which it is carried out, such a characteristic constitutes an essential and determining professional requirement, provided that the objective is legitimate and the requirement is proportionate (Section 3.3). The scope of the Act is confined to the field of employment and occupation. It is identical to that defined in Section 3.a)-d) of Act 216 of 9 July 2003 (see above, note on “specific legislation, 2.2). The remedies and procedure are also identical to those provided for in Section 4 of this Act (see above, note on “specific legislation”, 2.3).

2. Other laws

A further provision which expressly forbids racial discrimination is Section 1(2) of the Prison Act, which sets forth the principle of the equal treatment of prisoners irrespective of nationality or race.

Furthermore, it should be mentioned that other provisions outlaw the collection and processing of personal data concerning race or which may reveal the racial origin of the person concerned (Act 121 of 1 April 1981 and Act 675 of 31 December 1996).

Other items of legislation do not include any provisions which deal specifically with racial discrimination, but they do have clauses concerning the equal rights of foreigners. One example is Section 1 of Act n° 943 of 1986 on the placement of non-Community workers, which gives foreign workers the right to use social and health services and conserve their cultural identity, as well as the right to schooling and housing, within the framework of the laws governing these matters. The same principle is reasserted in ministerial memoranda on various specific subjects (for example, memorandum n° 207 of 16 July 1986 of the Ministry of Education, which recognises the right of education for foreigners resident in Italy).

3. Ethical codes

Clauses prohibiting all forms of discrimination may be found in the ethical codes of some professions. For example Article 5 of the code of ethics of Italian doctors states that:

"It is the doctor's duty to protect the life and physical and psychological health of human beings and to alleviate suffering while respecting human dignity, *without discrimination on grounds of age, race, religion, nationality*, social status, political or other opinions ..." (Institute's italics).

A similar principle is enshrined in Article 2 of the Charter of Journalists' Duties, which was approved on 8 July 1993 by the National Press Federation and the National Journalists' Association:

"A journalist may not discriminate against anyone because of their race, religion, sex, physical or mental condition or political opinion. Reference to these aspects of a person's private life is allowed only if it is of considerable public interest, provided that it is not discriminatory, insulting or denigratory".

Infringement of these ethical standards may give rise to disciplinary action by the professional body concerned. Thus, Article 48 of Professional Rule n° 69 of 3 February 1963 provides for the possibility of opening disciplinary proceedings before the Regional Council of the association against a journalist who has performed acts which are inconsistent with the dignity and honour of the profession. The penalties are a warning, censure, suspension and striking off (Article 51 of Rule n° 69).

Mention must be made in this context of an interesting case. In 1988, the Regional Council of the Journalists' Association of Lombardy issued a warning to a journalist who had made an allegedly disrespectful allusion to the Jewish origin of some Italian and foreign bankers. This decision was upheld by the National Council of the Association to which the journalist in question had appealed²³. Nevertheless the Milan District Court (*Tribunale*) which, according to professional rules is competent to hear appeals against the decisions of the National Council of the Journalists' Association (Article 63), set aside the penalty on the grounds that the contents of the article in

question were not in the least insulting²⁴. In its reasons, the Court did, however, state that the freedom to express ideas, guaranteed by Article 21 of the Constitution, is limited by the principle of the dignity and equality of citizens, set forth in Article 3 of the Constitution.

It must be noted that the above-mentioned ethical standards are much wider in scope than the criminal law provisions. According to the previous decisions of the National Council of Journalists, the purpose of the code of ethics is to establish the rules of earning an honest living, which may be infringed even if other persons' rights are not violated, whereas such violation is necessary for the existence of a criminal offence. Furthermore, disciplinary penalties may be imposed even if the breach of the code of ethics was due to mere imprudence, whereas criminal offences are punishable only if they involve wilful misrepresentation.

4. Laws to commemorate racial persecution

For the sake of completeness, mention should also be made of the recent adoption by the Italian Parliament of two laws providing for the commemoration of the Holocaust, namely Act 211 of 20 July 2000 and Act 91 of 17 April 2003.

The first proclaims 27 January as a “Day of Remembrance” to “commemorate the Shoah, the race laws, the persecution of the Jews, the Italians who suffered deportation and imprisonment, those who died, and all those who, despite having opposing ideas and being members of opposing parties, rose up against the planned genocide and, while risking their own lives, saved other lives and protected the victims of persecution”. On this occasion, ceremonies, initiatives and gatherings shall be organised to ensure that “in the future of Italy, the memory of a tragic period in its history and in that of Europe is preserved and that such events never happen again”.

The second established the National Museum of the Shoah in Ferrara as a “symbolic place for preserving the nation’s memory of the racial persecution and other tragic events of the Holocaust”. The museum’s tasks are to collect and exhibit personal accounts of the Shoah and the deportation of Italian Jews; promote educational activities and organise meetings at national and international level and exhibitions, film showings and other events on peace and fraternity between peoples and contact between different cultures and religions.

Note

¹ See “Rapporto alternativo 2002 Italia” drawn up by ENAR (European Network against Racism)

Note

² Bonetti, Melica, Castelvetri, Casadonte, La tutela contro le discriminazioni razziali, etniche e religiose, in Nascimbene (a cura di), Diritto degli stranieri, Padova, 2004, p. 1082 s

Note

³ Please see for example, decisions Nos. 120 of 15 November 1967, in Raccolta Ufficiale, 1967 p. 311 et seq., 104 of 19 June 1969 ibid., 1969, p. 173 et seq. and Order n° 215 of 1 July 1983 ibid., 1983, p. 479 et seq.

Note

⁴ Testo unico delle norme in materia delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero.

Note

⁵ Di Muro, L'azione civile contro la discriminazione, available on the Internet at www.cestim.it

Note

⁶ V. Bonetti, Melica, Castelvetri, Casadonte, La tutela contro le discriminazioni razziali, etniche e religiose, cit., p. 1115.

Note

⁷ Di Muro, L'azione civile contro la discriminazione, cit., p. 4.

Note

⁸ Tarzia, Manuale del processo del lavoro, IV ed., Milano, 1999, p. 370

Note

⁹ The applicant alleged discriminatory behaviour on the part of an inspector for the Florence public transport service. *Diritto immigrazione e cittadinanza*, n. 1/2000, p. 111 s.; for a commentary, see Mughini, Prime riflessioni a margine dell'ordinanza del Tribunale di Firenze in materia di azione contro la discriminazione razziale, *ibidem*, p. 82 s.

Note

¹⁰ Refusal by a property management agency, under instructions from the owner of an apartment, not to rent the apartment to a coloured non-EU citizen. *Diritto immigrazione e cittadinanza*, n. 2/2000, p. 74-75; pour un commentaire, v. Bouchard, *Discriminazione a Milano: il rifiuto di stipulare contratti di locazione con extracomunitari di colore*, in *Questione giustizia*, 2000, n. 3, p. 594 s.

Note

¹¹ Unauthorised publication of a photo of a couple – in which the face of the wife, of white race, was concealed, while that of the husband, a black person, was recognisable – alongside an article on the subject of “marriages of interest” between young women of foreign origin and older Italian men. An account of the case may be found on the website of the APIA, Associazione per l'informazione antirazzista, www.apiaweb.info

Note

¹² Bonetti, Melica, Castelvetri, Casadonte, La tutela contro le discriminazioni razziali, etniche e religiose, cit., p. 1116.

Note

¹³ Act n° 47 of 2 February 1948.

Note

¹⁴ In *Diritto dell'informazione e dell'informatica*, 1986, p. 458 et seq., note Lariccia; *Il diritto all'onore delle confessione religiose e dei loro fedeli*, and in *Responsabilità civile*, 1987, p. 85 et seq. note Zagnoni Bonilini, *Sull'onore delle "collettività"*. The case in question concerned the publication in a right-wing daily newspaper of a reader's letter containing very aggressive remarks about the Jewish community.

Note

¹⁵ The opposite argument was advanced by the Court of Cassation in its decision of 24 February 1964, in *Giur.it.*, 1964, II, p. 241 et seq. namely that the offence of insulting a religious faith other than the Catholic religion existed only when the insult was directed against a specific victim.

Note

¹⁶ The applicability of Section 3 of Act n° 654 of 1975 to outward expressions of intolerance and religious prejudice was expressly provided for by Section 2 (5) of Act n° 101 of 8 March 1989 on the relationship between the state and the Union of Italian Jewish communities.

Note

¹⁷ See above, note 3.

Note

¹⁸ Constitutional Court, n° 9 of 4 February 1965, in *Raccolta Ufficiale*, 1965, p. 73 et seq.

Note

¹⁹ See for example, Constitutional Court decisions n° 87, of 22 June 1966, in *Raccolta Ufficiale*, 1966 p. 209 et seq. and n° 15, of 14 December 1973, *ibid*, 1973, p. 97 et seq.

Note

²⁰ Constitutional Court, n° 86, of 21 March 1974, in *Raccolta Ufficiale*, 1974, p. 569 et seq.

Note

²¹ Cass. 5 July 1979, in *Rivista italiana di diritto e procedura penale*, 1982, p. 735, Cass. 29 June 1988, in *Giustizia penale*, 1989, II, p. 582.

Note

²² Cass. 29 March 1985, in *Foro it.*, 1986, 19, with a note by Fiandaca.

Note

²³ In *Diritto dell'informazione e dell'informatica*, 1992, p. 853 et seq.

Note

²⁴ *Ibid.* p. 856 et seq. note SOMMARUGA