



19.3.2024

NOTICE TO MEMBERS

Subject: Petition No 0919/2023 by L. M. (Italian) on racist and xenophobic speech allegedly common in the Italian media and contrary to EU law

1. Summary of petition

The petitioner complains about the allegedly regular presence in the Italian media of racist and xenophobic language as regards minorities living in Italy and EU, contrary to the provisions of Article 21 of the EU Charter of Fundamental Rights and of the Italian Constitution. he considers that this type of speech contributes to the perpetuation of discrimination and abuses towards the minorities and considers that financial penalties should be applied to its promoters.

2. Admissibility

Declared admissible on 1 February 2024. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 19 March 2024

The petitioner complains about the allegedly regular presence in the Italian newspapers and media of racist and xenophobic language as regards minorities living in Italy and EU, contrary to the provisions of Article 21 of the EU Charter of Fundamental Rights and of the Italian Constitution. The petitioner considers that this type of speech contributes to the perpetuation of discrimination and abuses towards the minorities and considers that financial penalties should be applied to its promoters.

The Commission's observations

The protection of persons belonging to minorities is one of the values on which the European Union is founded, together with the respect for human rights as stated in Article 2 of the Treaty on European Union. Article 21 of the Charter of Fundamental Rights of the European Union (the Charter) also prohibits discrimination on the basis of membership of a national minority,

but also on any other grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, property, birth, disability, age or sexual orientation. Freedom of expression is another fundamental right and is enshrined in Article 11 of the Charter and Article 10 of the European Convention on Human Rights.

However, according to its Article 51, the provisions of the Charter apply to the Member States only when they are implementing Union law.

Concerning the cases of hate speech alleged by the petitioner, currently, the European Union obliges Member States, including Italy, to criminalise hate speech and hate crime through the Council Framework Decision on combating racism and xenophobia¹ (the Framework Decision).

The Framework Decision defines hate speech as the public incitement to violence or hatred directed against a group of persons or a member of such a group and based amongst other, on the basis of the national or ethnic origin of the person or the group.

Indeed, as recognised in its settled case-law by the European Court of Human, freedom of expression is not an absolute right, and it is necessary in democratic societies to sanction all forms of expression which spread, incite, promote or justify hatred based on intolerance. Offensive or controversial statements or content might thus be legal. The Framework Decision provides for this balance between freedom of expression and the criminalisation of hate speech. In its Article 7, the Framework Decision explicitly recognises that it cannot result in requiring Member States to take measures in contradiction to fundamental principles relating to freedom of association and freedom of expression, in particular freedom of the press and the freedom of expression in other media as they result from constitutional traditions or rules governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where these rules relate to the determination or limitation of liability.

In addition, it must be stressed that the Commission does not monitor hate speech incidents in the Member States. It is under the competence of Member States, including their judicial authorities to ensure that alleged cases of hate speech are investigated and prosecuted, in accordance with their obligations in light of their constitution and their international commitments.

Furthermore, to support the fight against hate speech online at EU level, the Commission agreed on a Code of conduct² with a number of online platforms in 2016³. According to regular evaluations, the Code of conduct has enabled progress in the response by the platforms to hate speech notifications⁴.

Conclusion

1 Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law OJ L 328, 6.12.2008, p. 55–58

2 The EU Conduct on countering illegal hate speech online, please find more information at this link: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en

3 The IT Companies part of the Code of conduct are: Facebook, Instagram, YouTube, Microsoft, X, LinkedIn, Snapchat, TikTok, Dailymotion, Viber, Twitch, jeuxvideo.com

4 The results of the latest monitoring exercise were published in December 2022 and are available at https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en

It is for Member States, including their judicial authorities, to ensure that fundamental rights are effectively respected and protected in accordance with their national legislation and international human rights obligations.