



17.11.2023

NOTICE TO MEMBERS

Subject: Petition No 0354/2023 by Francesco Zanardi (Italian), on behalf of the association Rete L'ABUSO - Human Rights Connect, on combating child sexual abuse in Italy

1. Summary of petition

The petitioner alleges that the Lanzarote Convention on sexual offences, ratified by law 172/2012 is being incorrectly implemented in Italy. He points out that in Italy voluntary associations, including service cooperatives and religious denominations, are exempt from the obligation to produce the anti-paedophilia certificate. In particular, he argues that the latter would enjoy greater protection internally from prosecution for possible sexual offences, which in addition to the exemption from the certificate and the absence of an obligation to forward complaints to the national authorities, would be tantamount to encouraging abusers, resulting in impunity for abusers and leaving victims to fend for themselves. In support of his argument, he cites data from the Italian Episcopal Conference's report on sexual abuse within the clergy, in which the Conference itself admits that, according to data from 2020 to 2021, from only 30 of the 166 Italian diocese offices that took part, 23 out of a total of 68 reports (33.8%) concerned non-members of the clergy. He also claims that although the Church has set up diocese offices for victims of sexual abuse and vulnerable persons, he sees this as inadequate and even further instruments of violence against victims. He points out that these proceedings often end in convictions for other, less serious, offences, following numerous attempts to reach a settlement between the parties. Lastly, he recalls that on 28 February 2019, in the 80th section, sessions of 23 and 24 January, the United Nations Committee on the Protection of Children underlined its concern about the numerous cases of child victims of sexual abuse by religious personnel of the Catholic Church in Italy and the low number of criminal investigations and prosecutions by the Italian judiciary, declaring the need for a new national plan to prevent and combat the sexual abuse and exploitation of children based on the establishment of an independent and impartial commission of enquiry, on transparent and effective investigations, on the obligation to report any cases of alleged violence and, finally,

on the amendment of the legislation implementing the Lanzarote Convention to include voluntary work. The petitioner therefore asks the European institutions to clarify what EU initiatives there are to prevent and punish the sexual abuse of minors in Italy and whether there are any possible regulatory initiatives to extend the obligation to report to all citizens and to require the anti-paedophilia certificate to the categories currently exempted from it.

2. Admissibility

Declared admissible on 7 September 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 17 November 2023

'The Commission's observations

The Commission is committed to fight child sexual abuse and exploitation. On 24 July 2020, the Commission published a comprehensive EU Strategy for a more effective fight against child sexual abuse¹. The Strategy sets out eight concrete initiatives to fight against these crimes online and offline, using all the tools available at EU level, legislative and non-legislative, such as funding. In particular, one key initiative of the strategy is to ensure complete implementation of the current legislation.

Directive 2011/93/EU² establishes minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child sexual abuse material and solicitation of children for sexual purposes. It requires Member States to take a number of measures to prevent child sexual abuse, such as intervention programmes for offenders, education and awareness-raising campaigns. The Directive also sets out standards and obligations for Member States in relation to judicial proceedings and assistance and support measures for child victims. Member States are required to implement the Directive into their national legislative systems.

As for reporting the offences, Art. 16 removes obstacles that may prevent reporting but does not impose an obligation. The confidentiality rules imposed by national law on certain professionals whose main duty is to work with children must not constitute an obstacle to the possibility, for those professionals, of their reporting any situation to the competent services where they have reasonable grounds for believing that a child is the victim of offences laid down by the Directive. Besides, it requires Member States to take the necessary measures to encourage any person who knows about or suspects that offences under the Directive have been committed, to report this to the competent services. An obligation could be considered in the impending review of the Directive.

As for the certificate, in order to tackle the risks that offenders might re-gain access to children through employment or voluntary activities, Art. 10 of the Directive entitles employers recruiting for professional and voluntary activities involving close contact with children to request the criminal records of persons to be recruited. It also obliges Member States to provide as complete criminal records as possible in response to such requests, recurring to the European

¹ COM(2020) 607 final.

² Directive 2011/93/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, OJ L 335/1, 17.12.2011.

Criminal Record Information System whenever relevant and to any other appropriate source of information.

To ensure compliance with the above-mentioned obligations, the Commission monitors closely the implementation of Directive 2011/93/EU in Member States, including in Italy, and will continue to make use of its powers under the Treaties as needed to guarantee full and complete implementation.

The Commission is preparing a review of the Directive. In this context it is assessing a possible inclusion of a requirement for Member States to introduce an obligation, at least for professionals working in close contact with children in the education, childcare and health care sectors, to report to the competent authorities if they have reasonable grounds for believing that an offence under this Directive has been committed or is likely to be committed. Another potential amendment could aim to make mandatory the request of the criminal records by employers recruiting for professional and voluntary activities involving close contact with children.

Conclusion

It is recommended to inform the petitioner that, while there is yet no obligation deriving from EU law on individuals to report child sexual abuse to the competent authorities, creating such a legal obligation, at least for individuals in regular contact with children by virtue of their profession, is currently being considered. In addition, the Commission is also considering mandatory background checks for persons who are recruited for professional and voluntary activities involving close and regular contact with children.