



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Italy
<b>Title:</b>	Racist offences towards European MP Cécile Kyenge
<b>Date:</b>	23 October 2017
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<b>Update of news report</b>	<a href="#">Italy - Racist Offences towards Italian Minister Cécile Kyenge (PDF 64 kB)</a>
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Criminal offences, Hate speech
<b>Ground of discrimination:</b>	Race/ethnic origin
<b>Source:</b>	National court decisions, Tribunal of Milan of 18 May 2017, published 29 September 2017
<b>Field:</b>	N/A
<b>Applicable law:</b>	Articles 595 para 1 and 3 criminal code, Article 3, para. 1 of Law 205/1993; Art. 21 Italian Constitution; Art. 10 ECHR

### **Content**

**Case:** Cécile Kyenge, currently a Member of the European Parliament, is an Italian citizen of Congolese origin, the first coloured person appointed as Minister of the Government in the history of the Republic. Since the very first days of her mandate, several right-wing politicians have delivered public statements with a clear racist content. Among these, there was the MEP Mario Borghezio belonging to Lega nord who during a popular broadcast in April 2013 made very racist statements aimed targeting Cécile Kyenge. In particular he claimed that she belonged to a society based on "Tribal traditions", not apt to perform intellectual jobs.

The public prosecutor had started an investigation on this fact for the crime of defamation aggravated by racial discrimination according to Articles 595 para.1 and 3 of the Criminal Code and Art. 3 para. 1 of Law 205/1993. The European Parliament decided not to defend the immunity and privileges of Mario Borghezio on 10 October 2016; Kyenge joined the civil action to the criminal proceeding.

**Decision of the Court:** The Tribunal of Milan found that Borghezio offended Kyenge on grounds of her origin and of the colour of her skin. According to the Tribunal, Borghezio's statements showed that he believed in the superiority of the "white race" over the "black and African ones". Moreover, the Tribunal found that the exclusion of liability for opinions expressed as a politician did not apply, since the racist attack against Kyenge did not concern only her political convictions but, on the contrary, regarded her physical characters and her national origin. The Tribunal condemned Borghezio for racist offences but not for having advocated ideas founded on superiority and racial or ethnic hatred. Borghezio was condemned to pay a fine of 1000 Euros and 50.000 Euros as damages in favour of Kyenge. The Tribunal has taken into account not only national legal sources, but also Article 10 of ECHR as regards the freedom of expression and the limit to such a freedom when a political debate is at stake.

**Key points of analysis:** The judgment takes into account both national and European legal sources, in particular Article 10 of the ECHR and the interpretation given by the ECtHR. In this case the Tribunal found that the MEP had insulted Kyenge acting beyond the limits of political criticism.

It is worth mentioning that the European Parliament decided not to defend the privileges and immunity of Borghezio but in the same decision deplored "the fact that the Court of Milan, in spite of the relevant case law of the Court of Justice, refused to stay the proceedings brought against Mr Borghezio".

**Internet link source:**

<https://www.asgi.it/discriminazioni/la-condanna-borghezio-diffamazione-frasi-razziste-nei-confronti-cecile-kyenge/>;

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0312+0+DOC+XML+V0//EN>.