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“JUSTICE AND THE MEDIA”

National report

**prepared by
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SECTION 1

Public hearings and media access - Proceedings in private and limits to media access to information in the field of judicial (civil, administrative, criminal) activity - Secrecy of judicial investigations - Norms preventing dissemination of information on the development of a judicial case - Application of Recommendation Rec (2003) 13 on the provision of information through the media in relation to criminal proceedings.

As to criminal judicial activity, the Italian Code of Criminal Procedure (artt. 114 and 329) introduces a distinction between the discipline of secrecy of acts and the prohibition of dissemination of their content.

It is absolutely prohibited to publish acts covered by secrecy (acts of the public prosecution office and of judicial police, until the moment when they may be made known to the person under investigation, at the latest when preliminary investigations are declared closed); such prohibition extends both to the text and the content, even if in outline or summary.

Acts not covered by secrecy are not to be published according to a prohibition rule that becomes gradually more permissive as the rationale of prohibition becomes less relevant, such rationale being that the judge may learn of investigative action only in the limits allowed by the adversarial system of procedure in force in Italy.

At any rate, dissemination of the content (not the text) of acts that are not (or are no longer) secret is always permitted, in view of the needs of public information. Therefore there is no equivalence between possibilities to learn about acts of the criminal proceeding and the possibility of their dissemination.

As for acts covered by secrecy, according to current interpretation the absolute prohibition of dissemination concerns only the investigative acts, not the historical fact that translated into such acts (e.g., it is not possible to publish the content of the deposition of an eye-witness before the public prosecutor, but journalists may publish what they learn directly from the witness, if the deposition has not been declared secret - see below). As for detention, since the arrest of a person under investigation is known to the person, it is also not secret.

The public prosecution has powers to introduce variants to the relevance of secrecy of investigative acts: when this is needed for the continuation of investigations, the public prosecutors may allow - by way of deposit at the secretariat of the prosecution office, with availability for the public - dissemination of acts or parts of them. Correspondently, even when acts are no longer legally secret, the public prosecutor may order absolute secrecy of acts (either with the consent of the accused or when knowledge of the acts may jeopardise investigations concerning other persons) or may prohibit publication.

During the criminal trial, acts relating to the judge's dossier may not be published up to the decision of first instance; acts inserted in the prosecution's dossier may not be published up to the appeal decision, unless they have been used to challenge a witness's deposition.

If the criminal trial takes place behind closed doors, in the case provided for by the law,

prohibition may become absolute, but it ceases when publication is allowed according to the law on access to State's archives or after ten years from the decision, if the Ministry of Justice so allows.

In any case, publication of data and images of juvenile witnesses and civil parties is prohibited until they become of age. In the interest of the juvenile, the Juvenile Court or the juvenile him/herself if of at least 16 yrs of age, may authorise publication.

In the civil and administrative trials, both the hearings and the documents are confidential; the discussion hearing, when it is not waived, is public; the decision is public.

For all kinds of judicial decisions, upon request of a party or by his/her own motion, the judge may order that, if published, the personal data of the parties be omitted to protect privacy and dignity.

In conformity with art. 147 of the Implementation Rules appended to the Code of Criminal Procedure, the judge may, if the parties (public prosecutors, accused, civil party, etc.) allow, authorise in full or in part photographic, phonographic, audiovisual taping and/or radio or television broadcasting of the public criminal trial, if this does not jeopardise a tranquil carrying out of the trial and of the decision.

Authorisation may be granted even without the consent of the parties, when a relevant public interest in knowledge of a trial exists.

Even when taping or broadcasting is allowed, the judge forbids taking images of parties, witness, consultants, interpreters and any other person who has not given his consent, or if the law so forbids.

No taping or broadcasting may take place for trials that are dealt with behind closed doors.

As for relations between the judiciary and the media, only few public prosecution offices (in Italy, part of the Judiciary), and not the courts themselves, have spokespersons.

Art. 6 of the Ethical Code of Italian Judges and Prosecutors reads as follows:
*"In contacts with the press and other media, the judge or prosecutor does not request dissemination of news concerning his or her institutional activity.
When not bound by secrecy or confidentiality on information learned for official reasons, if he or she deems it appropriate to release information on judicial activity in order to guarantee correct information to citizens and the exercise of the right of public information, or to protect dignity and reputation of citizens, the judge or prosecutor nonetheless avoids to creating personal reserved or privileged information liaisons.
To safeguard full freedom of expression, the judge or prosecutor releases declarations and interviews to the press and other media following criteria of equilibrium and moderation".*

The High Council for the Judiciary has made reference to these rules that Italian Judges

and Prosecutors have created for themselves (as such, not binding) in the Council's regulations concerning this subject and disciplinary action, so as to avoid the imposition of external rules.

SECTION 2

Freedom of the media and protection of individuals - Respect for human dignity and private and family life - Freedom of thought and expression - Application of Recommendation Rec (2002) 2 on access to official documents - National law on freedom of expression, protection of privacy and human dignity

Although Italy was quite late in comparison with other Western European countries in adopting a complete privacy discipline, since the mid-1990's important legislation has been enacted, which fully responds to the needs relevant for the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and Recommendation Rec (2002) 2 of the Committee of Ministers to member States on access to public documents.

The complete discipline is now enshrined in a "Personal Data Protection Code" (Legislative Decree n. 196 of 30 June 2003). Please find appended the Italian text (annexe no. 1) and the English translation (annexe no. 2).

Sections 136 and after concern the journalistic activity in the field of justice. The law makes reference to the Code of practice for Journalists, which is also appended (references of the Code of practice are to the basic law now consolidated into the Privacy Code - a table of correspondences is provided in the Italian text).

As for access to public documents, the relevant law (n. 241 of 7 August 1990) was recently updated. Please find appended the Italian text of the law and of the amendments as approved (no English text available).

As for national law concerning protection of human dignity, according to Art. 594 of the Italian Penal Code, whoever offends the honour or dignity of another person, in his or her presence or by personal writing directed to that person, is liable of imprisonment of up to six months and a fine up to 516 Euros, penalties that are doubled if the offender attributes to the person a specific fact.

According to Art. 595, if an offense to reputation is done by communicating with more persons, the violation is punished by imprisonment of up to a year and a fine up to 1032 Euros, penalties that are doubled if the offender attributes to the person a specific fact.

If the violation is committed by the use of the press or other media, or in a public deed, imprisonment ranges from six months to three years and the fine is not less than 516 Euros.

According to Art. 596 bis, if the violation is committed through the press, such penalties are also applied to the person responsible for the publication.

One should keep in mind that, under Italian legislation, the judge may discretionarily

grant a general sentence discount up to one third of the penalty; that sentence discounts may be granted in case a simplified trial is accepted by the accused; that, in addition, penalties up to two years imprisonment may be suspended for first offenders, and cancelled if no violation occurs in the following five years.

The above penalties leave the civil party the right to ask for full compensation in a civil suit, that may also be dealt with within the criminal trial.

Journalists that disseminate information abstractly offending a person's reputation may be exempted from responsibility, in view of the right to information and public criticism, if the facts are true, and if their knowledge is relevant for public interest and the expressions used are measured and pondered. The criterion of truth of information may be substituted with apparent truth, if the journalist has verified the news according to professional diligence. As for interviews, truth of the facts may be substituted with truth of the declarations, if the interviewed person is a public figure (that will answer personally of the violation) and if the interview does not show that the interviewer participated indirectly to the violation; if the interviewed person is not a public figure, there will be no exemption and the interviewer will be held responsible if the interview is published.

The public nature of a source of information does not in general exempt journalists from verification, especially if the public source is violating secrecy or confidentiality rules.

Please see the "Personal data protection code" as to limits to journalistic coverage of arrests and the like.

Whereas rectification of inaccurate information is an ethical obligation of the journalist (see Code of practice), rectification as such does not exclude liability, since the damage has already taken place and, at most, it becomes less important so that compensation may be diminished.

Some observers advocate a relevance of rectification to exclude criminal prosecution, or even to be the only remedy for violations (so as to eliminate compensation). Public debate is quite important on this topic.

There are no measures that may be considered as equivalent to preventive censorship. In order to start a periodic publication, one only needs to register at a Court office, with no intervention of the Executive Branch.

"Ex post facto" (i.e. also between the printing and the distribution of a publication), both the criminal and the civil judicial authorities may order seizures or may issue protective orders, with full right of defense within contradictory procedures.