

ITALY

**MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL  
COOPERATION**

*Inter-ministerial Committee for Human Rights  
Comitato Interministeriale per i Diritti Umani (CIDU)*

**ITALY'S REMARKS**

**Steering Committee on Media and Information Society  
related to Safety of Journalists**

*June 5<sup>th</sup> , 2015*

## ITALY'S REMARKS

Following your query, at present we are in a position to provide the following information:

### Introductory remarks

The Basic Law determines the political framework for action and organization of the State. The fundamental elements or structural principles of the Basic Law concerning the organization of the State are as follows: Democracy, as laid down in Article.1; the so-called *personalistic* principle, as laid down in Article. 2, which guarantees the full and effective respect for human rights; the pluralist principle, within the framework of the value of democracy (Arts. 2 and 5); the importance of work, as a central value of the Italian community (Arts. 1 and 4); the principle of solidarity (Article.2); the principle of equality, as laid down in Article.3 (it is also the fundamental criterion applied in the judiciary system when bringing in a verdict); the principles of unity and territorial integrity (Article 5); and above all the relevant principles, including the social state, the rule of law and the respect for human rights and fundamental freedoms, such as freedom of correspondence, freedom of movement, freedom of religion or belief, and freedom of opinion and expression – as also mentioned in your report (para.10).

The Italian legal system aims at ensuring an effective framework of guarantees, to fully and extensively protect the fundamental rights of the individual. Indeed, we rely on a solid framework of rules, primarily of a constitutional nature, by which the respect for human rights is one of the main pillars.

Within our national system of protection of human rights, a specific mention has to be made of the Italian Constitutional Court that deals only with infringements at a constitutional level (the Constitutional Court consists of fifteen judges; one-third being appointed by the President of the Republic, one-third by the Parliament in joint session, and one-third by ordinary and administrative Supreme Court)<sup>1</sup>. The Constitutional Court exercises its duty as the highest guardian of the Constitution in various ways. It becomes active when it is called on. For example, it supervises the preliminary stages of referenda and is competent in case of presidential impeachment. Complaints of unconstitutionality may be submitted to the Italian Constitutional Court by central and local Authorities claiming that a state or a regional Act might be unconstitutional. Therefore, the Constitutional Court monitors Authorities to see whether they have observed the Constitution in their actions. It also arbitrates in cases of disagreements between the highest State's organs and decides in proceedings between central and local Authorities.

- Procedurally, the Constitutional Court must examine *ex officio* (the prosecutor) or upon request of the plaintiff/defendant whether the provisions to be applied are in compliance with the Basic Law. When the Court considers that an act is unconstitutional, such evaluation brings to a suspension of the *a quo* proceeding. Accordingly, a decision is made by the Court itself, pursuant to Art. 134 of the Italian Constitution. The Constitutional Court decides (and its decisions cannot be appealed) disputes: 1. concerning the constitutionality of laws and acts with the force of law adopted by state or regions; 2. arising over the allocation of powers between branches of government, within the state, between the state and the regions, and between regions; 3. on

---

<sup>1</sup> The Constitutional Court consists of fifteen judges; one-third being appointed by the Head of State, one-third by the Parliament in joint session, and one-third by ordinary and administrative Supreme Court.

accusations raised against the head of State in accordance with the Constitution. More generally, the Constitutional Court decides on the validity of legislation, its interpretation and if its implementation, in form and substance, is in line with the Basic Law. Thus, when the Court declares a law or an act with the force of law unconstitutional, the norm ceases its force by the day after the publication of its decision.

Freedom of expression and freedom of the press are protected by the Italian Basic Law of 1948 in its Article 21, which sets forth: “*Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication. The press may not be subjected to any authorisation or censorship [...]*”.

**1. Have there been any facts of killing or physical violence against journalists, other media actors or media outlets in your country because of the exercise of their right to freedom of expression within the last two years (2013-2014)? If yes, please list. No, none.**

**2. Are there any pending procedures concerning facts defined above before the judicial authorities in your country? If yes, since when and what is the stage of the procedure? Please list. N/A**

**3. Is police protection provided when requested by journalists or other media actors who declare and substantiate being threatened? Do prosecutors and courts deal with cases where journalists or other media actors have received threats or have been attacked, in an adequate and timely manner? If there are such cases, please list.**

At the Ministry of the Interior-Department of Public Security – mention has to be made of the Central Bureau of Inter-Forces for Personal Security (acronym in Italian, UCIS) that provides guidance to ensure that the most appropriate protection measures be implemented with regard to both domestic and foreign dignitaries, as well as with regard to those people, and their relatives, who, for their duties or for other proven reasons, are exposed to danger or threat, potential or actual (See Art.1, lett. N, of Act No.133/2002). As for the latter, such a situation usually – and this must be stressed – mainly concerns those journalists investigating organized crime.

The UCIS, jointly with the prefects concerned, determines the level of risk in light of the degree of exposure to the danger by the person to be protected (from the 1st to the 4th level, in descending order of danger), in accordance with Ministerial Decree dated 28.5.2003. For example, with reference to the threats received by a famous Italian journalist by organized crime, the UCIS provides for a protection measure ranking the 2nd level of risk.

For example, please consider the following cases:

A) Defamation-related cases:

**The mayor will convene the Municipality’s Council to decide whether to file a complaint for slander**

On July 8, 2014 in San Procopio (Reggio Calabria), during the religious procession of the patron saint, while collecting offerings from the believers, the religious procession allegedly stopped in front of the house of the wife of Alvaro Nicola, head of the homonymous clan of the 'Ndrangheta, being detained since 2010. On this episode, which has been learnt by the local police headquarters

in Reggio Calabria on July 12 by means of news, the local investigative unit of the National Police, coordinated by local Anti-Mafia District, is carrying out specific investigations.

## B) Safety-related cases

### **Journalists under death threat**

In the course of the year 2014, various threat-episodes have been denounced by Mr. Michele FINIZIO, editor of the Newspaper "BASILICATA 24", based in the Municipality of Potenza:

- On February 28, 2014, Mr. Finizio reported to have found, under the doormat of the front door, a note addressed to him containing death threats, in which it was written, "behavior considered to be arrogant, guilty and repulsive";
- On March 5, 2014, Mr. Finizio reported to have found - about 10 days before - on the ground, close to his car, a piece of cotton soaked in liquid partially burnt. He was together with his colleague, Giusi Cavallo;
- On March 10, 2014, Mr. Finizio reported to have found scratches on his car parked in the garage below his Office. The victim was with some colleagues (Ms. Cavallo and Mr. Bonanata);
- On March 13, 2014, Ms. Giusy Cavallo reported to have found, under the doormat of the front-door of their Office, a note addressed to Mr. Finizio containing threats of the following content "you frighten people with disinformation...". Ms. Cavallo also reported that on March 4, some unknown persons had burnt the nameplate of the mailbox, while on March 7 she had found another letter of threats at the entrance hall;
- On March 29, 2014, Mr. Finizio and Ms. Cavallo complained that they had found on their cars near their Office, anonymous letters containing threats, including symbols (crosses) against them and against Ms. Bonanata;
- On October 4, 2014, Mr. Finizio reported to have found in the mailbox of the newspaper, an anonymous letter containing a message of intimidation, including against "Spartacus", presumably Mr. SPARTACO Andrea, journalist and main contributor to "Basilicata 24";
- On May 27, 2014, Mr. Finizio and Ms. Cavallo reported to have received additional threat-messages: a manuscript with the sign of the cross and the words "Anger, risk, the dipstick lift, bomb, power, outrage, violence control, bomb" as found on April 15 in the mailbox; on April 26 they found a ticket on the windshield of Mr. Finizio's car with the words: "DIE, SHIT" and the crosses on the wall of the garage of the Office; On May 13, the word ".. Bonanata is dead ..Shame! Your articles are at the limit of the decency.. Finizio will die"; and the crosses on the wall next to the elevator of their Office on May 27.

The above incidents are under investigation by the local patrol police, upon delegation by the local Prosecutor's Office.

### **Journalist put under police's protection**

On August 25, 2014, the Carabinieri of the Ragusa HQs. intervened at Mr. Borrrometi's home, a journalist and correspondent of "AGI" agency and editor of the website "La SPIA.IT (the spy.it)", because unknown people had set fire at the doormat of the entrance of his house. The journalist had already been the recipient of protection measures. The act might be due to some articles published by the victim, following an operation conducted by the Carabinieri against a criminal organization based in Scicli (Ragusa). The Committee for Order and Public Safety of Ragusa ordered for Mr. Borrrometi, the adoption of the protection measures of 4th level. The Carabinieri are currently carrying out ad hoc investigations.

## **Journalist beaten by protesters**

With regard to the episode of aggression occurred on November 8, 2014 in Bologna to the detriment of Mr. E. Barbetti, a journalist of "Il Resto del Carlino", three anarchists were reported to the Police at the Municipality of Bologna.

## **Journalist attacked despite the measures of protection by the police**

On 11/12/2014, in Rome, Mr. L. Abbate, a journalist of the publishing group "L'Espresso", being subject to specific protection measures, was on a car buffered by the car of a 21-year old man with no criminal record. The sequence of events is as follows: the protection personnel, while accompanying Mr. Abbate home, had noticed a Renault Clio which was following them at a very short distance. Despite attempts to misdirecting that car, they were buffered – though the Renault car pulled away abruptly. The suspect was chased and stopped immediately. The investigations on the case, conducted by the patrol police of Rome, made it possible to bring the fact to a mere accident caused by lack of attention by the Renault car's driver, who, as said, later resulted with a clean record.

**4. Are there any journalists or other media actors arrested or imprisoned for crimes and offences linked with journalistic activities; are there any journalists or other media actors allegedly imprisoned for their journalistic activities?** None as for the latter. As for the former, in January 2015, the Supreme Court of Cassation confirmed the condemnation verdict against Mr. Fabrizio Corona, a gossip magazine and fashion photographer, as involved – inter alia - in several cases of extortion against famous fashion, football and show representatives. Mr. Corona is now serving a detention penalty at Opera Prison.

**5. Have there been any media outlets closed by judicial or administrative decision within the last two years (2013, 2014); if yes, please list.** The National Newspaper "l'Unità" was closed down within a bankruptcy proceeding, which is still ongoing.

**6. Is the confidentiality of journalists' sources of information protected in both law and practice? Please list administrative measures taken or court cases, if any, introduced for the disclosure of journalists' sources within the last two years (2013-2014).**

In line with Art.11 of the ECHR, the legislation regarding the Order of Journalists imposes on journalists the obligation to secrecy of their sources (Professionals Act No.69/1963.). The violation of this Act would entail a disciplinary sanction pursuant to Art.48, Act No.69/1963. Only the judicial Authorities (never the Public Attorney's Office), under given circumstances, may request the disclosure of information under Art.200 of the Penal Procedure Code. Needless to say, the professional journalist can still refuse to disclose this information.

**7. Does the domestic legislation in your country regarding defamation/libel include criminal law provisions? 8. What are the procedural guarantees (the right to defence, the periods of limitation applicable to defamation suits, *exceptio veritatis* and the burden of proof, presumption of good faith etc.) included in the civil and/or criminal legislation related to defamation? 9. In the domestic legal framework, are state officials protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty?** Article 594 of the Italian Criminal Code addresses insult ("*ingiuria*"), an offence which is distinct from defamation. Defamation is defined under Article 595 as a damage to the reputation/honor of a person through communication with several persons. There are three forms of aggravated defamation: through the allegation of a specific act (Article 595 § 2); through the press

or any other means of publicity, or through a public deed (§ 3); and if it is directed to a political, administrative or judicial body (§ 4).

Article 596 excludes the defence of justification (proving the truth of the allegation, *exceptio veritatis*), except for the cases of defamation through the allegation of a given act, in three cases: 1) when the defamed person is a public official and the alleged act relates to the exercise of his functions; 2) if criminal proceedings are still pending on the alleged act on the part of the defamed person, or if proceedings are brought against him or her; 3) if the complainant formally requests that the judgment should extend to ascertaining the truth or falsity of the alleged act.

Article 596bis extends to the editor, deputy editor, publisher and printer, the application of the provisions of Article 596 dealing with the defence of the truth. Plus, Articles 57 and 57bis of the Criminal Code provide for liability of the editors/deputy editor and publisher or printer, in case the offence of defamation is committed, for failure to conduct supervision of the content of the publication. Article 58 extends the scope of these provisions to the clandestine press. Should the condemnation not be suspended, an additional penalty is applied (*pena accessoria*) concerning the temporary interdiction from labour (Art.20, p.c.). However as for the latter the Court of Cassation has clarified that it is not automatically applied but it depends on the further ascertainment of abuse by the journalist in accordance with Art.31, p.c. by which “abuse of the profession” stands for absurd performance aimed at an objective other than the traditional one stemming from the job position under reference. The abuse of the profession requires an illegitimate conduct from both a subjective and objective standpoint, such as the repetition of the conduct, seriousness of the intentionality.

More specifically, the aim and the rationale behind the relevant provisions of the domestic criminal code indicate the constant balancing between opposite stances. As for the “reputation/honor”, there is a common understanding to refer to “those conditions on the basis of which the social value of the individual is expressed”; as for “the dignity”, there is a common understanding to refer to “the intellectual, physical and social features of individuals”. Thus, consideration should be given to the fact that the protection of the reputation/honor of individuals may result in a stance opposite to freedom of expression, including press, and vice-versa.

Hence, the limits to the so-called “right to chronicle” are of the utmost importance and are to be considered therein. Both the Italian legal literature and the case-law have constantly affirmed that the exercise of the right to news reporting (*diritto di cronaca*) and of the freedom of the press guaranteed in Article 21 of the Basic Law represents a cause of justification within the meaning of Article 51 of the Criminal Code, thus making the acts (the communication of information damaging the honour, the dignity or the reputation of another person) non punishable. A landmark judgment of the Court of Cassation (*Cassazione civile, sez. I, October 18, 1984*), constantly applied by civil and criminal courts, has set out the three criteria for the application of Article 51: the social utility or social relevance of the information; the truthfulness of the information (which may be presumed (*verità putativa*) if the journalist has seriously verified his or her sources of information); restraint (“*continenza*”), referring to the civilised form of expression, which must not “violate the minimum dignity to which any human being is entitled”.

The case-law has further clarified that these three criteria cannot fully operate in relation to the right to criticize and to satire (See Cass. Sez.1, Decision No. 40930 dated September 27, 2013; Cass. Sez. 5, Decision No. 37706, dated 23/05/2013; Sez. 5, Decision No. 3356, dated October 27, 2010; Sez.5, Decision No. 15060, dated 23/02/2011; Sez.5, Decision No. 43403, dated 18/06/2009; sez.1, Decision No. 4496, dated 14/01/2008). Also, the Italian Constitutional Court (see Decision No. 175, 5 July 1971, in *Raccolta Ufficiale delle Sentenze e Ordinanze della Corte Costituzionale*, Vol.

XXXIV, 1971, p. 550) has stated that the exclusions and the limitations of the *exceptio veritatis* provided for in Article 596 of the Criminal Code are not applicable when the defendant exercises the cause of justification related to the freedom of expression recognized by Article 21 of the Italian Basic Law, asserting the truthfulness of the information. Importantly, in most cases the truthfulness of the communicated information excludes criminal defamation.

In brief, the defence of truth, public interest and responsible journalism are largely recognised by the Italian case-law. The Supreme Court has often stated that such a right is lawful when it is exercised under the following circumstances/requirements: 1. social value; 2. truth; 3. correct exposition of the episode under consideration. Along these lines, the so-called “right to criticism” must be exercised within specific limits: 1. correctness of the language; 2. respect for one’s rights (Cass. No. 40930/13). However, as a matter of fact, freedom of the press and freedom of expression relating to politics and trade union areas enjoy more extensive interpretations.

At present, various pieces of legislation aimed at amending the criminal discipline of defamation are under discussion before the Italian Parliament. In this context mention has to be made of the so-called Costa Bill (currently under Chamber Act-925-B), as initially approved by the Chamber of Deputies, amended by the Senate, and currently before the Chamber of Deputies for the second reading.

- The amendments proposed to the current legislation aim at limiting the use of criminal sanctions for defamation, introducing, first of all, the abolishment of imprisonment.
- This Bill aims at a more appropriate balance between the safeguards required by the protection of reputation and the unhindered exercise of freedom of expression, including freedom of the press. During the parliamentary debate, not yet completed and that could lead to further changes on other aspects of equal importance, there have been several efforts to establish better criteria for the assessment of damages resulting from defamation, aimed in particular at removing the detention measures within the system of penalties provided for by Italian law currently in force. It also envisages the simultaneous amendment of the provisions of civil and criminal law as a way to respond to the concern for a comprehensive and consistent approach in this field. Efforts have been made to ensure improved criteria for assessing damages resulting from defamation. As for civil liability for offences committed by means of the media, when assessing damage, courts shall take into account, in addition to the seriousness of the injury and the circulation and local or national relevance of the concerned media, the reparatory effect of the publication of the rectification with the subsequent effect of excluding the penal liability.
  - In brief, mention has to be made of the following: a two year time-limit for civil actions for damages; an aggravating circumstance if a fact attributed to a person results to be false; prohibitory measures in case of recurrence; a specific increased focus on the role of the editor and the related liability in case of defamation, as well as the reformulation of Art.57 of the criminal code; the strengthening of the system to discourage the frivolous litigation to avoid mismanagement of the civil action; and the extension to independent journalists and "contributors" of the protection of journalistic sources.

With regard to the amount of the fine, according to the proposed provision amending the press law, the fines applicable to the media for defamation will be increased for defamation via the press with attribution of a specific act, in accordance with the general principle of proportionate sanctions, according to specific circumstances. The principle of proportionality also remains a key

requirement for the proposal introducing higher fines for those allegations being disseminated when known to be untrue, only.

April 2, 2014, the Italian Parliament approved the law delegating the Government to reform the system of penal sanctions (Act No. 67/2014), under which it is envisaged to abrogate the offence of insult which will thus become relevant only in the civil sector.

**10. Do laws on the protection of public order, national security or anti-terrorism have safeguards for the right to freedom of expression? What are these safeguards?** Media freedom is guaranteed by the Italian Basic Law.

**11. Are the following instruments translated into the national language and disseminated widely, in particular brought to the attention of judicial authorities and police services? Are these made available to representative organisations of lawyers and media professionals?** Several HR courses and trainings take place for judicial Authorities at the newly established school for magistrates. The same applies for law enforcement agencies. Further as for journalists, mention should be made of the Charter of Rome. However, for the sake of transparency, Italian Authorities pay the utmost attention to freedom of expression, including media freedom, in all relevant fora, from the UN Human Rights Council to the OSCE Media Special Representative. Thus, as for your last query, the Inter-ministerial Committee for Human Affairs is committed to translating and disseminating all the Recommendation under reference, including to the Parliament.

**In conclusion,** Italian Authorities take this opportunity to reiterate their firm willingness to continue cooperating fully and extensively with your Committee and its distinguished mechanisms mandate-holders.