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Opinion n° 715 / 2013

CDL-REF(2013)035
Engl. Only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

LEGISLATIVE PROVISIONS
CONCERNING PROTECTION AGAINST DEFAMATION

IN ITALY

(Unofficial Translation)

Provisions on the press, defamation, offences related to the journalist's professional and criminal procedure

Source: <http://www.odg.it/content/legge-n-471948>

Law No. 47 of 8 February 1948

Art. 1 Definition of press or printed matter

For the purposes of this law, press and printed matter are understood as being any typographical reproduction or reproduction obtained by mechanical or physicochemical means, designed for any mode of publication.

Art. 2 Compulsory indications on printed matter

All printed matter must indicate the place and year of publication, as well as the name and address of the printer and, where appropriate, the publisher. Newspapers, news agency publications and periodicals of any other kind must bear the following indications:

- place and date of publication;
- name and address of printer;
- name of owner and the editor-in-chief or deputy editor.

The identity as established in the compulsory and non-compulsory indications on the printed matter must correspond to the identity mentioned in the content of all copies thereof.

Art. 3 Editors-in-chief

All newspapers and periodicals must have editors-in-chief.

The editor-in-chief must be an Italian national fulfilling all the conditions for inclusion in the electoral register.

Italians who are not resident in the Republic can also be editors-in-chief provided that they fulfil all the conditions for inclusion in the electoral register.

If the editor holds a parliamentary mandate, a deputy editor must be appointed to take over the duties of editor-in-chief.

The provisions of the present Law on editors-in-chief apply to the person taking on responsibilities as per the previous indent (1).

(1) See Art. 9, Law No. 52 of 6 February 1996, which, for the purposes of the present Article, places nationals of member states of the European Community on the same footing as Italian nationals.

Art. 4 Owners

If the owner is an Italian national resident in Italy, in order to publish a newspaper or other periodical he must fulfil all the conditions for inclusion in the electoral register. If the owner is an Italian national residing abroad, he must fulfil all the conditions for inclusion in the electoral register.

If the owner is a minor or a legal entity, the conditions mentioned in the previous indent must be fulfilled by the legal representative.

The same conditions must also be fulfilled by the person responsible for journalistic activities, if such person is not the owner (1).

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(1) Art. 9, Law No. 52 of 6 February 1996 treats nationals of member states of the European Community as equivalent to Italian nationals for the purposes of the present Article.

Art. 5 Registration

Newspapers and periodicals may be published only if they have been registered with the registry of the court of the district in which the organ is to be published.

The following documents must be submitted to the registry for the purposes of registration:

- 1) a declaration, with the certified signatures of the owner and the editor-in-chief or the deputy editor, setting out the name and address of the latter and of the person responsible for journalistic activities, if such person is not the owner, as well as the title and nature of the publication;
 - 2) documents proving fulfilment of the conditions set out in Arts. 3 and 4;
 - 3) a document proving registration with the journalists' association, where this is required by the relevant professional regulations;
 - 4) a copy of the constituent instrument or statute, if the owner is a legal entity. The President of the court or a judge delegated by the latter will verify the lawfulness of the documents submitted and must, within fifteen days, order the registration of the newspaper or periodical in the appropriate court register.
- The court register is accessible to the public.

Art. 6 Declaration of alterations and amendments

Any alteration or amendment to one or more of the items set out in the declaration provided for in Article 5 must be the subject of a fresh declaration, to be submitted, in the prescribed manner, within fifteen days of the said alteration or amendment, together with any relevant documentation.

Annotation of the alteration shall be effected as set out in the third indent of Art. 5. The obligation set out in the present Article is incumbent on the owner or person responsible for journalist activities, where the latter is not the owner.

Art. 7 Lapse of registration

The registration shall lapse if the periodical has not been published six months after the date of registration or if publication is interrupted for more than twelve months.

Art. 8 Right of reply and rectifications

The editor or deputy editor is required to insert free of charge into the newspaper, periodical or the press agency declarations or rectifications vis-à-vis subjects regarding whom pictures have been published or to whom acts, ideas or affirmations have been attributed detrimental to their dignity or contrary to the truth, even if the content of the declarations or rectifications are not liable to criminal sanctions.

Where newspapers are concerned, the declarations or rectifications mentioned in the previous indent shall be published not later than two days after submission of the request, at the top of the newspaper page where the news item in question was printed.

Where periodicals are concerned, the declarations or rectifications shall be published no later than in the second issue following the week in which the request was received, on the same page as that on which the article in question was originally published.

Rectifications or declarations must refer to the text originating them and be published in their entirety, although they must not exceed thirty lines, using the same typography, as regards the section directly referring to the challenged statements.

In cases where the time-limits mentioned in the second and third indents have lapsed and the rectification or declaration has still not been published or has been published in such a way as to breach the provisions of the second, third and fourth indents, the person requesting the rectification, unless he wishes to proceed in accordance with the tenth indent of Article 21, can apply to the district court, by virtue of Article 700 of the Code of Civil Procedure, for an injunction ordering publication of the rectification.

Partial or complete failure to comply with the obligation set out in the present Article shall be liable to an administrative fine of between 15.000.000 and 25.000.000 lire (1). The judgment ordering the fine must be published in extract form in the newspaper or periodical or at the agency in question. The judgment will, as appropriate, order the publication of the missing rectification (2).

(1) The original pecuniary penalty was replaced by the administrative penalty set out in Art. 32, Law No. 689 of 24 November 1981, augmented as compared with the fine set out in Art. 114, indent (1), of the aforementioned Law No. 689/1981.

(2) Article replaced by Art. 42, Law No. 416 of 5 August 1981.

Art. 9 Compulsory publication of judgment

In passing sentence for offences committed via publication in a periodical, the court shall in all cases order the publication of the judgment, verbatim or in extract form, in the periodical in question. The editor-in-chief must effect the publication free of charge in accordance with Art. 615, first indent, of the Code of Criminal Procedure.

Art. 10 Wall newspapers

Wall newspapers which have titles and are published regularly, including partly hand-written publications, are covered by the provisions of the present Law.

In the case of single-copy wall newspapers, it is sufficient, for the purposes of Law No. 374 of 2 February 1939, for the public security authority to have been notified of the posting of the newspaper. Failure to comply with this provision shall be punished within the meaning of Art. 650 of the Penal Code.

Wall newspapers are exempt from taxation.

Art. 11 Civil liability

In case of offences committed by means of the press, the owner of the publication and the editor hold joint and several civil liability with the perpetrators of the offence.

Art. 12 Pecuniary redress

In case of defamation committed by means of the press, the injured person may claim, in addition to compensation for damage within the meaning of Article 185 of the Criminal Code, a sum of money by way of redress. The sum shall be determined in proportion to the seriousness of the injury and the circulation of the printed matter.

Art. 13 Penalties for defamation

In case of defamation committed by means of the press which consists in the allegation of a given act, the penalty of a prison sentence of between one and six years and a fine of not less than 500.000 lire shall be imposed (1).

(1) The amount of the fine is thus augmented as compared with Art. 113, second indent, Law No. 68924 of November 1981. In pursuance of Art. 24 of the Penal Code, the amount of the fine cannot be less than 10.000 lire. The penalty is excluded from the decriminalisation set out in Art. 32, second indent, of the aforementioned Law No. 689/1981.

Art. 14 Children's and youth publications

The provisions of Art. 528 of the Penal Code also apply to publications designed for children and teenagers when, owing to the sensitivity and impressionability of young people, the said publications are liable to offend their moral sentiments or to incite them to corruption, crime or suicide. The penalty in such cases shall be augmented.

The same provisions apply to newspapers and periodicals designed for children which systematically or repeatedly recount or illustrate detective and adventure stories in such a way as to encourage instincts leading to violence and breach of social discipline (1).

(1) See Law No. 355 of 17 June 1975.

Art. 15 Publications with frightening or horrifying contents

The provisions of Art. 528 of the Penal Code also apply to the case of printed matter describing or illustrating, with frightening or horrifying details, real-life or imaginary events, in such a way as to disturb the common feeling of morality or domestic order or to encourage suicides or crime (1)

(1) See Law No. 355 of 17 June 1975.

Art. 16 Clandestine press

Anyone publishing a newspaper or other type of periodical without effecting the registration provided for in Art. 5 shall be punished by up to two years' imprisonment or a maximum fine of 500.000 lire (1).

The same penalty applies to anyone publishing non-periodical printed matter which fails to display the name of the editor or the printer or indicates false names.

(1) The amount of the fine is thus augmented as compared with Art. 113, second indent, Law No. 68924 of November 1981. In pursuance of Art. 24 of the Penal Code, the amount of the fine cannot be less than 10.000 lire. The penalty is excluded from the decriminalisation set out in Art. 32, second indent, of the aforementioned Law No. 689/1981.

Art. 17 Omission of compulsory indications from printed matter

Without prejudice to the provisions of the previous Article, any other omission from or inaccuracy in the indications prescribed in Article 2 or breach of the last indent of this same Article shall be punished with an administrative fine of up to 100.000 lire (1).

(1) The original pecuniary penalty was replaced by the administrative penalty set out in Art. 32, Law No. 689 of 24 November 1981, augmented as compared with the fine set out in Art. 114, indent (1), of the aforementioned Law No. 689/1981. In pursuance of Art. 26 of the Penal Code, the amount of the fine cannot be less than 4.000 lire.

Art. 18 Breach of the obligations laid down in Article 6.

Anyone failing to submit the declaration of alteration or amendment as per Art. 6 or continuing to publish a newspaper or other periodical after rejection of the annotation of the alteration shall be punished with an administrative fine of up to 250.000 lire (1).

(1) The original pecuniary penalty was replaced by the administrative penalty set out in Art. 32, Law No. 689 of 24 November 1981, augmented as compared with the fine set out in Art. 114, indent (1), of the aforementioned Law No. 689/1981. In pursuance of Art. 26 of the Penal Code, the amount of the fine cannot be less than 4.000 lire.

Art. 19 False declarations in the registration of periodicals

Anyone including fallacious information in the declarations provided for in Arts. 5 and 6 shall be punished in accordance with the first indent of Art. 483 of the Penal Code.

Art. 20 Removing, destroying or damaging printed matter

Anyone who removes, destroys or damages printed matter in respect of which the relevant legal provisions have been respected, with a view to preventing its sale, distribution or circulation, shall be punished with a prison sentence of between six months and three years, unless the fact constitutes a more serious offence.

The same penalty is applicable to anyone who uses violence or threats to prevent the printing, publication or circulation of periodicals in respect of which the relevant legal provisions have been respected.

The penalty shall be augmented if the fact is committed by several persons acting together or in a public place, or in printing shops, news kiosks or agencies or any other premises designed for public sales. Summary procedure shall be used for the above-mentioned offences.

Art. 21 Jurisdiction and judicial form

The regional courts are responsible for trying offences committed by means of the press, except where the assize court holds jurisdiction.

The procedure cannot be transferred to the district court.

Summary procedure shall be used in such cases.

In all cases the court must deliver judgement within a maximum of one month from the date of submission of the complaint or report.

Jurisdiction for the judicial proceedings consequent upon breaches of the provisions on rectifications, as per Article 8 of the present Law, falls to the district court (1).

Summary procedure applies here (1).

The following is compulsory:

- a) the district court must in all cases deliver judgment within sixty days of the submission of the complaint;
- b) appeal courts must deliver judgment within forty-five days of the expiry of the deadline for submitting the grounds of appeal;
- c) the Court of Cassation must deliver judgment within sixty days of the expiry of the deadline for submitting the grounds of appeal (1).

The procedures mentioned in the present Article shall also be dealt with during the holiday period as set out in Article 91 of the judicial regulations approved under Royal Decree No. 12 (1) of 30 January 1941.

Failure to comply with the obligation set out in the seventh indent constitutes a disciplinary offence (1). In all cases, the person requesting the rectification can apply to the district court for an emergency order, within the meaning of Articles 232 and 219 of the Code of Criminal Procedure, to the editor requiring him to immediately publish or transmit the relevant responses, rectifications or declarations (1). (1) As added to Art. 43, Law No. 416 of 5 August 1981.

Art. 22 Periodicals which have already been authorised

In the case of newspapers and other periodicals already authorised under previous laws, the registration provided for in Article 5 must be effected within four months of the entry into force of the present law.

Art. 23 Arrogations

Royal Legislative Decree No. 13 of 14 January 1944 is hereby abrogated, as are any other provisions contrary to or incompatible with those of the present Law.

Art. 24 Implementing standards

The Government will issue the standards for implementing the present Law (1).

(1) These standards have never been issued.

Art. 25 Entry into force of the Law

The present Law will come into force on the day after that of its publication in the Official Journal of the Republic.

Extracts from the Italian Penal Code

Italian Penal Code

Art. 57 Offences committed by means of the periodical press

Without prejudice to the liability of the author of the publication and unless complicity is involved, any editor-in-chief or deputy editor who fails to conduct, vis-à-vis the content of his periodical, the supervision required to prevent offences being committed by means of this publication shall be punished for negligence if an offence is committed, with the penalty laid down for this offence, reduced by a maximum of one-third.

Art. 57 bis Offences committed by means of the non-periodical press

In the case of the non-periodical press, the provisions of the previous Article shall apply to the publisher, if the author of the publication is unknown or is non-chargeable, or the printer, if the publisher is unknown or is non-chargeable.

Art. 58 Clandestine press

The provisions of the previous Article also apply to cases of violation of the legal provisions on publication and dissemination of the periodical and non-periodical press.

Art. 58 bis Admissibility of complaints relating to offences committed by means of the press

If the offence committed by means of the press is punishable on complaint, petition or application, including the punishable offences set out in the three previous articles, complaint, petition or application proceedings must be commenced.

The complaint, petition or application submitted against the editor-in-chief or deputy editor, publisher or printer shall also apply to the author of the publication in terms of the offence committed by the latter.

The offences set out in the three previous articles are non-prosecutable if authorisation is required to prosecute the offence committed by the author of the publication, until such times as authorisation is granted. This provision does not apply if the authorisation is dependent on the status or personal situation of the author of the publication.

Art. 278 Affront to the honour or prestige of the President of the Republic

Anyone who affronts the honour or prestige of the President of the Republic shall be punished with a prison sentence of between one and five years.

Art. 290 Defamation of the Republic, the constitutional institutions and the armed forces

Anyone who publicly defames the Republic, Parliament, the Government, the Constitutional Court or the judicial system shall be punished with a fine of between € 1 000 and € 5 000. The same penalty applies to anyone who publicly defames the State armed forces or the liberation armies.

Art. 290 bis Equal status of the person replacing the President of the Republic

For the purposes of Articles 276, 277, 278, 279 and 289, persons replacing the President of the Republic shall be given equal status to the latter.

Art. 291 Defamation of the Italian nation.

Anyone who publicly defames the Italian nation shall be punished with a fine of between € 1 000 and € 5 000.

Title II Offences against honour

Art. 594 Insults

Anyone who affronts the honour or dignity of an actual person shall be punished with a prison sentence of up to six months or a fine of up to € 516.

The same penalty is applicable to anyone who commits this offence by means of telegraphic or telephone communications, or in writing or drawings, targeting the insulted person. The penalty is a prison sentence of up to one year or a fine of up to € 1 032, where the affront consists in the allegation of a given act.

The penalties are augmented where the insult is committed in the presence of several persons.

Art. 595 Defamation

Without prejudice to the cases mentioned in the previous Article, anyone who, in communication with several persons, damages the reputation of other person(s) shall be punished with a prison sentence of up to one year or a fine of up to € 1 032.

If the defamation consists in the allegation of a given act, the penalty is a prison sentence of up to two years or a fine of up to € 2 065.

If the insult is published in the press or by any other means of publication or is broadcast in public, the penalty shall be a prison sentence of between six months and three years or a minimum fine of € 516.

Where the defamation targets a political, administrative or judicial agency, a representative of the latter or a collegiate authority, the penalties shall be augmented.

Art. 596 Inadmissibility of exonerating evidence

Persons committing the offences set out in the previous two articles are not permitted to exonerate themselves by proving the truth or notoriety of the alleged act performed by the defamed person.

Nevertheless, where the defamation consists in the allegation of a given act, the defamed person and the defamer can agree, before delivery of the final judgment, to refer the decision on the truth of the alleged act to a court of honour.

However, where the affront consists in the allegation of a given act, proof of the truth of the said act is always admitted in criminal proceedings if:

- 1) the defamed person is a public official and the alleged act relates to the exercise of his functions;
- 2) 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) the complainant formally requests that the judgment should extend to ascertaining the truth or falsity of the alleged act.

If the truth of the act is proven or if the person alleged to have performed the act is sentenced for such act after its allegation, the author of the allegation shall not be punishable unless the method used fails to render *ipso facto* applicable the provisions of Art. 594 para. 1 or Art. 595 para. 1.

Art. 596 bis Defamation by means of the press

If the offence of defamation is committed by means of the press, the provisions of the previous Article shall also apply to the editor-in-chief or deputy editor, the publisher and the printer, for the offences set out in Articles 57, 57 bis and 58.

Art. 597 Complaint by the defamed person and termination of the offence

The offences set out in Articles 594 and 595 are punishable on a complaint from the defamed person.

If the defamed person and the defamer have had recourse to the option mentioned at the beginning of the previous Article, the complaint shall be considered tacitly abandoned or dismissed.

If the defamed person dies before expiry of the time-limit for submitting the complaint, or in the case of defamation of the memory of a deceased person, the complaint may be submitted by close relatives, including adoptive parents and adopted children. In such cases, and also where the defamed person dies after having submitted the complaint, the option mentioned at the beginning of the previous Article is also available to the aforementioned close relatives, including adoptive parents and adopted children.

Art. 598 Insults in written documents and speeches delivered before the judicial or administrative authority

Any insults or affronts set out in written documents submitted and statements delivered by the parties or their defence counsels in proceedings before the judicial authority or before an administrative authority are not punishable if they concern the subject of the case or administrative appeal.

When deciding on the case, the judge may, in addition to disciplinary measures, order the deletion or cancellation, in full or in part, of the written documents in question and order payment to the defamed person of a sum of money in non-material damages. In the case of written documents which cannot be deleted or cancelled, the judgment shall be annotated to this effect.

Art. 599 Retaliation and provocation

In the cases set out in Article 594, if the affronts are mutual, the judge may declare non-punishable one or both of the defamers.

Persons having committed one of the acts described in Articles 594 and 595 in a state of anger which has been caused by an unjust act by a third party and is suffered after this act shall not be punishable.

The provision set out at the beginning of this Article shall also apply to defamers who have not submitted a complaint for the affronts suffered.

XVII LEGISLATURE — BILLS AND REPORTS — DOCUMENTS

Nos. 925-191-1100-1165-1190-1242-A

CHAMBER OF DEPUTIES

BILL

No. 925, tabled by Deputy COSTA

Amendments to Law No. 47 of 8 February 1948, to the Criminal Code and to the Code of Criminal Procedure in matters of defamation, libel committed via the press or other media, insults and the sentencing of defendants

Submitted on 13 May 2013

BILLS

No. 191, tabled by Deputy PISICCHIO

Amendments to the Criminal Code, to the Code of Criminal Procedure and to Laws Nos. 47 of 8 February 1948 and 69 of 3 February 1963 in matters of defamation, libel committed via the press or other media, insults and the sentencing of defendants, and on introduction of the Jury for the Accuracy of Information

Submitted on 15 March 2013

NOTE: Standing Committee II (justice) decided to issue a favourable opinion on Bill No. 925 on 2 August 2013. On the same date the committee requested leave to make an oral report. For the texts of Bills Nos. 191 1100, 1165, 1190 and 1242, please see the relevant documents.

No. 1100, tabled by Deputies

GELMINI, BRUNETTA and BERGAMINI

Amendments to the Criminal Code, to the Code of Criminal Procedure and to Law No. 47 of 8 February 1948 in matters of defamation, libel committed via the press or other media, insults and the sentencing of defendants

Submitted on 29 May 2013

No 1165, tabled by Deputies

**DAMBRUOSO, CARUSO, ANTIMO CESARO, GALGANO, GIGLI, MARAZZITI,
MAZZIOITI DI CELSO, MOLEA, NISSOLI, RABINO, ANDREA ROMANO, ROSSI,
SCHIRÒ PLANETA AND VARGIU**

Amendments to Law No. 47 of 8 February 1948, to the consolidated legislation in Legislative Decree No. 177 of 31 July 2005, and to the Criminal Code concerning offences perpetrated via the press or radio or television broadcasts or via other media, as well as defamation and insults

Submitted on 6 June 2013

No. 1190, tabled by Deputies

LIUZZI and BUSINAROLO

Amendments to the Criminal Code, to the Code of Civil Procedure and to Law No. 47 of 8 February 1948 concerning the offences of proffering insults, defamation and libel committed via the press, as well as on reparation of damage

Submitted on 12 June 2013

AND

No. 1242, tabled by Deputies

**MOLTENI, CAPARINI, ALLASIA, BORGHESI, MATTEO BRAGANTINI,
CAON, GRIMOLDI and GIANLUCA PINI**

Amendments to the Criminal Code and to Law No. 47 of 8 February 1948, in matters of insults, defamation and offences perpetrated via the press, as well as on publication of replies and corrections

Submitted on 20 June 2013

(Rapporteurs: **COSTA and VERINI**)

OPINION OF STANDING COMMITTEE I
(CONSTITUTIONAL AFFAIRS, PRESIDENCY OF THE COUNCIL, INTERNAL
AFFAIRS)

Committee I,

having examined the new draft of Bill C. 925 Costa, laying down "Provisions in matters of defamation, libel committed via the press or other media, insults and the sentencing of defendants",

Taking note that:

the title of the legislation, which is concerned with libel committed via the press, also refers to other media used to disseminate opinions;

Article 1 contains no express provisions relating to so-called blogs, some of which nonetheless have, from a substantive standpoint, a communication range similar to that of the news media governed by this article, with the result that consideration should be given to their relevant effects as regards the balance to be struck between the public interest in accessing information and the interest of persons concerned, whether natural or legal persons, in suffering no damage to their personal identities;

Having verified that:

based on an examination of the text from the standpoint of reconciliation of the injured party's interest in obtaining protection and the interest in ensuring the reasonable length of proceedings, also taking into account the need to deflate the number of lawsuits, the normative solutions adopted do not have the effect of barring proceedings in the event that the perpetrator of the offence makes a reparatory offer that is deemed appropriate by the judicial authorities;

Considering that:

Article 1, paragraph 01, extends the application of Law No. 47 of 1948 to on-line newspapers, without calling for its extension to radio and television broadcasts, which are nonetheless covered by specific provisions set out in Article 1, paragraph 1, *b*;

Article 1, paragraph 1, *c*, drawing on provisions introduced by the Senate, amends Article 8 of Law No. 47 of 1948 by inserting after the fourth paragraph, a paragraph providing that, for the non-periodical press, at the request of the injured party, the author of a text or the person referred to in Article 57-bis of the Criminal Code (the editor, if the author is unknown or cannot be charged, or the printer, if the editor is not specified or cannot be charged) shall arrange for the publication of statements or rectifications by persons whose images have been published or to whom facts, acts, ideas or statements have been attributed that can be deemed harmful to their reputation or untrue, provided that the content of such statements or rectifications is not liable to give rise to criminal charges, only "in the event of reprinting or of a further dissemination, including by electronic means, which must in all cases be done on their own official website.";

However, if there is no reprint or no further dissemination, including by electronic means, and the author of the text or the other parties liable do not have their own official website, no provision is made for an alternative means of publishing statements or rectifications at the injured party's request;

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While making it possible for the perpetrator of the offence to take advantage of the rectification procedure, Article 1, paragraph 1, *d*, establishes no information requirements concerning him/her, incumbent on the director of the newspaper or periodical or the person in charge of the broadcast, enabling him/her to know about a rectification request submitted by the injured party;

Noting that:

Article 1, paragraph 1, *b*, amends Article 8 of Law No. 47 of 1948, inserting, after the third paragraph, a new paragraph that provides "For radio or television broadcasts the statements or rectifications shall be made in accordance with Article 32 of the consolidated radio and television legislation, as set out in Legislative Decree No. 177 of 31 July 2005, and subsequent amendments thereof";

It would seem correct to assume that the reference to Article 32 of the consolidated radio and television legislation should be replaced with Article *32-quinquies*, which provides for means of rectification via television or radio broadcasts, which nonetheless seem primarily to concern broadcasts of a daily nature and can scarcely apply to broadcasts taking place with a different frequency or once only;

Taking into account that:

Article 1, paragraph 2, in respect of Article 11 *bis*, provides that, when determining the damage, the court shall take account of the reparatory effect of the rectification;

However, in paragraph 4 of the same article, in respect of Article 13, paragraph 3, provision is made for a perpetrator who makes arrangements for the publication of statements or rectifications, to go unpunished, but with no indication that this shall not affect the perpetrator's civil liability, in relation to which the civil court must take account of the reparatory effect of the rectification, in accordance with the above-mentioned Article 11;

In respect of Article 13, paragraph 1, Article 1, paragraph 4, establishes a penalty for libel committed via the press, without dealing with defamation via radio or television broadcasts;

Article 2, paragraph 3, replaces the current Article 595 of the Criminal Code with a new wording containing no express reference to the cases inherent in the current wording "any other means of publication, or a public document";

issues a

FAVOURABLE OPINION

subject to the following conditions:

1. In Article 1, paragraph 01, the applicability of Law No. 47 of 1948, already provided for in the case of on-line newspapers, should be extended also to radio or television broadcasts, which are covered by specific provisions in paragraph 1 *b* of the same Article 1;
2. Article 1, paragraph 1 *c* should provide for the possibility of publishing statements or rectifications, at the injured party's request, also if there is no reprint or no further dissemination, including in electronic form, and where the text's author or the other parties liable do not have their own official web-site;

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3. In Article 1, paragraph 4, the proposed wording for Article 13, paragraph 1 should be supplemented to include defamation committed via radio or television broadcasts;

and with the following observations:

a) Consideration should be given to the advisability of supplementing the title of the bill, where reference is made to other media used to disseminate opinions, with a reference to means of communication;

b) Consideration should be given to the feasibility of adopting normative solutions with a deflationary effect, which would lead to the closing of proceedings where a reparatory offer by the perpetrator of the offence is deemed appropriate by the judicial authorities;

c) The Committee likewise considers that Article 1, paragraph 1 *b* should refer to Article 32-*quinquies* instead of Article 32 and that provision should be made for the possibility of broadcasting rectifications also in the case of a non-periodical or non-daily radio or television programme;

d) In Article 1, paragraph 4, the proposed wording for Article 13, paragraph 3, should include an explicit clause stipulating that the perpetrator's civil liability shall remain unaffected and that, with regard to this responsibility, the civil court shall take account of the reparatory effect of a rectification, in accordance with the previously cited Article 11;

e) In Article 2, paragraph 3, which proposes a replacement wording for Article 595 of the Criminal Code, it should be considered whether the normative scope of the wording adopted suffices to cover also the aggravating circumstances mentioned in the current version of this third paragraph, which refers to "any other means of publication, or a public document".

OPINION OF STANDING COMMITTEE V
(BUDGET, FINANCE AND PLANNING)

NO IMPEDIMENT

OPINION OF STANDING COMMITTEE VII
(CULTURE, SCIENCE AND EDUCATION)

Committee VII,

Having examined the new wording of Bill C. 925 Costa and Others, laying down "Provisions in matters of defamation, libel committed via the press or other media, insults and the sentencing of defendants", as resulting from the amendments approved by the referring entity;

Taking into account the fact that the text approved by the Justice Committee, which concerns libel committed via the press or other media, insults and the sentencing of defendants, reforms the matters governed by Law No. 47 of 1948, which is now very outdated, above all because of the emergence of new technologies resulting in a multiplication of the information supply in newspapers, on websites and via radio and television, but also because of new public sensitivities;

Considering that, in view of the sensitive subject matter, which relates to citizens' right to information that is accurate, respectful and "transparent", and at the same time free from forms of conditioning, whether physical or financial in nature, an in-depth examination is required;

Noting that, on closer examination, the public interest coincides with that of journalists, who are seeking guarantees of their right to produce accurate information with full freedom of conscience and in accordance with the rules of ethics;

Commending the work of Committee II on Justice, which held in-depth discussions with the parties concerned by the legislation, establishing optimum mediation between the different political sensitivities present in Parliament, which led to the definition of an offence of libel committed via the press that consists in attribution of a specific fact and incurs an aggravated penalty;

Noting that the legislation under consideration includes a number of significant innovations, the chief of which is undoubtedly the abolition of prison sentences for journalists convicted of libel, but which also include the exclusion of "blogs", in so far as the text solely concerns press websites registered as media outlets with the courts, and a form of deterrent for "frivolous" lawsuits since the courts will be able to impose a fine on the plaintiffs concerned;

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Noting that, in the present case, a rectification obligation, for the protection of the injured party, is introduced, along with the requirement that, where the rectification obligation applies to news items, articles or reports published by on-line press websites, these rectifications must be made promptly – within two days – with the same graphic presentation, the same method of access to the site and the same visibility as the news items to which they relate, without changing the URL;

Bearing in mind that a significant innovation concerns the liability of the director, who may delegate his/her supervisory functions to one or more professional journalists suited to this role in a written, dated document, accepted by the delegee(s);

Considering that the new wording under consideration provides for forms of protection for contributors, to whom is extended the legislation in matters of professional secrecy already in force for professional journalists under Article 200 of the Code of Criminal Procedure,

issues a

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subject to the following conditions:

- 1) The new rules on defamation, libel committed via the press or other media, insults and the sentencing of defendants should also be made applicable to radio or television news and current affairs programmes;
- 2) It would seem necessary to provide that the director in charge of the news media outlet - whether it is in paper form, a periodical or a daily, a registered on-line newspaper, a radio or television news or current affairs programme or a press agency release – should be obliged to inform the author of the article that the plaintiff has requested a rectification, while at the same time making it obligatory for the editor to publish a rectification at the request of the article's author;
- 3) Since the offence of defamation as defined in Article 595 of the Criminal Code is amended, merging the paragraphs on libel committed via the press or by other means of publication contained in Article 13 of the law on the press, but disregarding the part of that article concerned with radio and television broadcasts, the latter should be reintroduced in the new Article 13;
- 4) The Committee also deems it necessary to modify the fine payable for so-called frivolous lawsuits, introducing, with a view to having a more dissuasive effect, a criterion of proportionality between the sum claimed by a frivolous plaintiff and the damages awarded to a defendant acquitted on any of the grounds provided for in Article 530 of the Code of Criminal Procedure, if the plaintiff's claims are recognised as unfounded;
- 5) In the event of publication of a rectification without further comments, it is proposed that this should be deemed to constitute reparation – that is to say just satisfaction for the injured party – on condition that it is published with the same visibility as the article or news item found to be defamatory; however, where the rectification is published with comments the lawsuit shall continue;
- 6) It is considered necessary to provide for the author of the defamatory text to be required to afford redress in proportion to the offence;

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7) As regards criminal proceedings for defamation committed via the press, radio or television or for failure to exercise due supervision, it is proposed that the legislation continue to require the holding of a preliminary hearing, which, since the sole penalty provided for would be a fine, would otherwise be eliminated;

and with the following observations:

Thought should be given to the advisability, in the case of on-line newspapers registered with the courts, of providing that possibly defamatory non-journalistic comments should, upon request, be removed from the website within twenty-four hours. In the event of failure to do so within the prescribed time-limit criminal proceedings could be instigated.

OPINION OF STANDING COMMITTEE IX
(TRANSPORT, POST AND TELECOMMUNICATIONS)

Committee IX,

having examined the new draft of the Bill entitled "Provisions in matters of defamation, libel committed via the press or other media, insults and the sentencing of defendants" (Chamber document No. 925 Costa and Others),

Given that:

The text as a whole is commendable, since it pursues the aim of formulating legislation ensuring a better balance between the need for, on one hand, guarantees of the freedom of the press and of opinion and, on the other hand, protection of the honour of those whose reputation has been offended;

In particular, as regards the sphere of competence of Committee IX, it is to be welcomed that the law regarding the right of rectification is being extended, including from the standpoint of liability profiles, both to radio or television broadcasts and, as a result of the amendments adopted by Committee II in a reporting capacity, to on-line newspapers registered in accordance with Article 5 of Law No. 47 of 1948, concerning which appropriate means of exercising the right of rectification are laid down;

Disregarding the content of the draft text under consideration, there is moreover a need to revise the law governing the registration of on-line newspapers, which is currently obligatory solely if the newspaper wishes to benefit from the financial support provided for in Law No. 62 of 2001;

It should also be noted that the provisions concerning the means of exercising the right of rectification in the case of on-line newspapers could usefully be reformulated, since the draft wording refers to requirements concerning the graphic presentation, access to the website and the page, which it is not always possible to identify in the effective configuration and structure of on-line newspapers;

For formal co-ordination purposes, it can be pointed out that the reference in Article 1, paragraph 1 *b* of the Bill to Article 32 of the consolidated legislation on radio and television in Legislative Decree No. 177 of 2005, should concern Article 32–*quinquies* instead;

issues a

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subject to the following conditions:

- a. In Article 1, paragraph 1, *a-bis* the words from "with the same graphic presentation" to the end of the sub-paragraph should be replaced by: "with the same access method, visibility and relevance as the news items concerned, and at the beginning of the article containing the news items, without changing the URL, and in such a way as to make clear the modifications made. If the on-line newspaper referred to in the previous sentence provides a personalised service, the statements or rectifications shall be sent to subscribers who had access to the news item in question.";
- b. In Article 1, paragraph 1, *b* the words "in accordance with Article 32 of the consolidated radio and television legislation" should be replaced with "in accordance with Article 32-*quinquies* of the consolidated radio and television media services legislation";

and with the following observations:

The Committee considers it appropriate to determine the scope of the draft legislation under consideration in such a way as to ensure the exclusion of on-line newspapers' content not directly covered by the editor's supervision.

TEXT OF BILL No. 925

ART. 1.

*(Amendments to Law
No.47 of 8 February
1948)*

1. Article 8 of Law No. 47 of 8 February 1948 shall be amended as follows:

a) In the second paragraph after "shall be published" add the following "without comments";

b) The following shall be inserted after the third paragraph:

TEXT OF THE
COMMITTEE

ART. 1.

*(Amendments to Law
No. 47 of 8 February
1948.*

1. Add the following paragraph at the end of Article 1 of Law No. 47 of 8 February 1948:

"The provisions of this law shall apply also to on-line newspapers registered in accordance with Article 5 and to radio or television news or current affairs programmes."

2. *Identical*

a) **In the first paragraph the words "have included free of charge" shall be replaced with the following "publish free of charge and without comments"; after "press agency release" the following shall be inserted "or on-line newspapers registered in accordance with Article 5" and at the end of the paragraph the following sentence shall be added "The director or person in charge shall be required to inform the author of the article or report, if signed, of the rectification request.";**

b) The following sentence shall be added at the end of the second paragraph: **"For on-line newspapers registered in accordance with Article 5, statements or rectifications shall be published within not more than two days of receipt of the request, with the same graphic presentation, the same method of access to the site and the same visibility as the news items to which they relate, and on the page of the article containing the news items concerned, without changing the URL, and using a graphic presentation that makes clear the modifications made."**

c) *Identical*

"For radio or television broadcasts the statements or rectifications shall be made in accordance with Article 32 of the consolidated radio and television legislation, as set out in Legislative Decree No. 177 of 31 July 2005 and subsequent amendments thereof.";

c) The following shall be inserted after the fourth paragraph:

"For the non-periodical press, at the request of the injured party, the author of a text or the person referred to in Article 57-bis of the Criminal Code shall arrange for the publication, **at their own expense, in not more than two national daily newspapers selected by the injured party**, of statements or rectifications by persons whose images have been published or to whom facts, acts, ideas or statements have been attributed that can be deemed harmful to their reputation or untrue, provided that the content of such statements or rectifications is not liable to give rise to criminal charges. The rectifying publication shall be made within seven days of the request with a suitable layout and graphic presentation and shall inter alia contain a clear reference to the original article or news item.";

d) The following shall be inserted after the fifth paragraph;

"For radio or television broadcasts the statements or rectifications shall be made in accordance with **Article 32-quinquies** of the consolidated **radio and television media services** legislation, as set out in Legislative Decree No. 177 of 31 July 2005 and subsequent amendments thereof.";

d) *Identical*

"For the non-periodical press, at the request of the injured party, the author of a text or the person referred to in Article 57-bis of the Criminal Code shall, **in the event of reprinting or of a further dissemination, including by electronic means, which must in all cases take place on their own official website**, arrange for the publication of statements or rectifications by persons whose images have been published or to whom facts, acts, ideas or statements have been attributed that can be deemed harmful to their reputation or untrue, provided that the content of such statements or rectifications is not liable to give rise to criminal charges. The rectifying publication shall be made **on the website and in the new electronic publication** within **two** days of the request or **in the first relevant reprint** with a suitable layout and graphic presentation and shall inter alia contain a clear reference to the original article or news item

e) In the fifth paragraph the words "after the time-limits laid down in the second and third paragraphs" shall be replaced with "after the time-limits laid down in the second, third, fourth and sixth paragraphs", the words "in breach of the second, third and fourth paragraphs" with "in breach of the second, third, fourth and sixth paragraphs" and the words "the magistrate" with "the court";

f) *Identical*

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"The perpetrator of the offence may avail him/herself of the same procedure if the director of the newspaper or periodical or the person in charge of the radio or television broadcast fails to publish the requested denial or rectification."

2. The following shall be inserted after Article 11 of Law No. 47 of 8 February 1948:

"Article 11 bis. - (Damages). - 1. In assessing the damage resulting from the publication recognised as detrimental to the injured party's reputation or untrue, the court shall take account of the reparatory effect of publication of a rectification, if requested by the injured party.

2. When the court awards damages on an equitable basis, the non-pecuniary redress cannot exceed 30 000 euros. The court shall not be bound by this limit if the defendant has already been ordered to make redress in favour of the same injured party under a final sentence handed down by a civil or criminal court.

3. In the cases covered by this law, civil actions for damages to a person's reputation shall be statute-barred one year after the publication."

3. Article 12 of Law No. 47 of 8 February 1948 is repealed.

4. Article 13 of Law No. 47 of 8 February 1948 is replaced by the following:

"The perpetrator of the offence can avail him/herself of the same procedure if the director of the newspaper, periodical **or on-line newspaper within the meaning of Article 5**, or the person in charge of the radio or television broadcast fails to publish the requested denial or rectification. **In the event of a request by the author, the director or person in charge shall be obliged to publish a denial or rectification.**";

g) in the sixth paragraph the words "of 15 000 000 to 25 000 000 lire" shall be replaced by "of 8 000 to 16 000 euros".

3. Identical

"Article 11 bis. - (Damages). - 1. In assessing the damage resulting from the **defamation committed via the press or a radio or television broadcast**, the court shall take account of the **circulation and national or local relevance of the means of communication used to commit the offence, the seriousness of the offence and the reparatory effect of publication or dissemination** of a rectification."

Deleted.

2. "In the cases provided for under the present law, civil actions for damages to a person's reputation shall be statute-barred **two years** after the publication".

4. Identical

5. Identical

"Article 13. — (*Penalties for libel*).

— 1. In the event of libel committed via the press, consisting in the attribution of a specific fact, a fine of between 5000 and 10 000 euros shall be incurred.

2. Conviction of the offence referred to in paragraph 1 shall entail the ancillary penalty of publication of the judgment under the arrangements laid down in Article 36 of the Criminal Code and, in the circumstances set out in Article 99, second paragraph, of that Code, the ancillary penalty of prohibition from exercising the profession of journalist for a period of one to six months.

3. The perpetrator shall not be liable to a penalty if he/she arranges for the publication of statements or rectifications in accordance with Article 8.

4. In deciding that the perpetrator shall not incur a penalty, the court shall examine whether the rectification complies with the legal requirements.

5. In its judgment the court shall order the transmission of the relevant documents to the competent professional association with a view to the determination of disciplinary sanctions".

"Article 13. — (*Penalties for libel*).

— 1. In the event of libel committed via the press, consisting in the attribution of a specific fact, a fine of between 5 000 and 10 000 euros shall be incurred. **If the offence involves untrue allegations concerning a specific fact, disseminated while known to be untrue, a fine of between 20 000 and 60 000 euros shall be incurred.**

2. Conviction of the offence referred to in paragraph 1 shall entail the ancillary penalty of publication of the judgment under the arrangements laid down in Article 36 of the Criminal Code and, in the circumstances set out in Article 99, second paragraph, **1)** of that Code, the ancillary penalty of prohibition from exercising the profession of journalist for a period of one to six months.

3. *Identical*

4. *Identical*

5. *Identical*

ARTICLE 2

(Amendments to the Criminal Code)

1. Article 57 of the Criminal Code shall be replaced by the following:

"Article 57. - *(Offences committed via the press, radio or television broadcasts or other media)*. – Without prejudice to the liability of the author of a publication, except in cases of collusion, the director or deputy director in charge of a daily newspaper, periodical or other newspaper or a radio or television broadcast shall be liable for offences perpetrated via the press, radio or television broadcasts or other media, if the offence is the result of a breach of his/her duties of supervision of the publication's content. The penalty shall be reduced by one-third in all cases."

2. Article 594 of the Criminal Code shall be replaced by the following:

"Article 594 - *(Insult)*. – Anyone who offends the honour or dignity of an actual person shall be liable to a fine of up to 5 000 euros. The same penalty shall be applicable to anyone who commits this offence by means of telegraphic, telephone or telematic communications or in writings or drawings targeting the offended person."

ARTICLE 2

(Amendments to the Criminal Code)

1. *Identical*

"Article 57. - *(Offences committed via the press, radio or television broadcasts or other media)*. – Without prejudice to the liability of the author of a publication, except in cases of collusion, the director or deputy director in charge of a daily newspaper, periodical or other newspaper, a radio or television broadcast, **or an on-line newspaper registered in accordance with Article 5 of Law No. 47 of 8 February 1948** shall be liable for offences perpetrated via the press, radio or television broadcasts or other media, if the offence is the result of a breach of his/her duties of supervision of the publication's content. The penalty shall be reduced by one-third in all cases. **The ancillary penalty of prohibition from exercising the profession of journalist shall not apply. A director or deputy director held liable in accordance with the first sentence may, in view of the size of the organisation and the circulation of the newspaper, periodical or other newspaper or the audience of the radio or television broadcast or on-line newspaper registered in accordance with Article 5 of Law No. 47 of 8 February 1948, delegate the supervisory functions referred to in the first sentence to one or more professional journalists suited to this role in a written, dated document, accepted by the delegate(s).**"

2. *Identical*

"Article 594. - *(Insult)*. - *Identical*

Identical

The penalties shall be increased when the offence consists in attributing a specific fact or is committed in the presence of a number of persons."

3. The first, second and third paragraphs of Article 595 of the Criminal Code shall be replaced by the following:

"Anyone who, except in the circumstances laid down in Article 594, while communicating with a number of persons, offends another's reputation shall incur a fine of 1 500 to 6 000 euros.

The penalty shall be increased when the offence consists in attributing a specific fact.

If the offence is committed via the press or any other means of publication, or in a public document, **a fine of 3 000 to 8 000 euros shall apply.**

The provisions of the third paragraph of Article 13 of Law No. 47 of 8 February 1948, as subsequently amended, shall apply when the perpetrator publishes a full rectification of the opinion or content that is detrimental to the other person's reputation.

In the cases laid down in the second paragraph of Article 99 conviction shall entail the ancillary penalty of prohibition from exercising the profession of journalist for a period of one to six months."

The penalties shall be increased **by up to a half** when the offence consists in attributing a specific fact or is committed in the presence of a number of persons."

3. Article 595 of the Criminal code shall be replaced by the following:

"ARTICLE 595. — (Defamation). — Anyone who, except in the circumstances laid down in Article 594, while communicating with a number of persons, offends another's reputation shall incur a fine of **3 000 to 10 000 euros..**

If the offence consists in attributing a specific fact, **the penalty shall be a fine of up to 15 000 euros.**

If the offence is committed via any form of publication, **by telematic means** or in a public document, **the penalty shall be increased by half."**

Deleted

Deleted

ARTICLE 3

(Amending Article 427 of the Code of Criminal Procedure)

1. The following shall be inserted after the third paragraph of Article 427 of the Code of Criminal Procedure:

"3-bis. The court may also order the plaintiff to pay a sum of 1 000 to 10 000 euros to the office responsible for collecting fines (cassa delle ammende)".

ARTICLE 3

(Amending Article 427 of the Code of Criminal Procedure)

Identical.

ARTICLE 4.

(Amendment to Article 200 of the Code of Criminal Procedure)

1. The third paragraph of Article 200 of the Code of Criminal Procedure shall be replaced by the following:

"3. The provisions of paragraphs 1 and 2 shall apply to professional journalists and contributors, entered on the respective lists of the professional register, with regard to the names of persons from whom they obtained information on trust in the exercise of their profession. However, if the information in question is essential to provide proof of the offence in question and its truth can be ascertained solely by identifying the source, the court shall order the professional journalist or contributor to reveal the source of his/her information."