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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

BILL

AMENDING CURRENT LEGISLATIVE PROVISIONS
CONCERNING PROTECTION AGAINST DEFAMATION
IN ITALY

Bill n°925
approved by the Chamber of Deputies
on 17 October 2013

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

Approved by the chamber of Deputies on 17 October 2013

Transmitted to the Senate on 18 October 2013

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, limited to the content produced, published, transmitted or made available on the network by the same editors and to radio or television news or current affairs programmes."

2. Article 8 of Law No. 47 of 8 February 1948, as previously amended, shall be amended as follows:

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, without reply and without title, with the following statement: "Rectification of the article (TITLE) of (DATE) signed by (AUTHOR)"; after "press agency release" the following shall be inserted "or on-line newspapers registered in accordance with Article 5, limited to the content produced, published, transmitted or made available on the network by the same editors " 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, limited to the content produced, published, transmitted or made available on the network by the same editors, 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) The following shall be inserted after the third 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) 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, 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 internet 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 internet 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) The following shall be inserted after the fifth paragraph

"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, limited to the content produced, published, transmitted or made available on the network by the same editors, 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 as provided by this article.";

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. 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 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."

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 Article 12 of Law No. 47 of 8 February 1948 is repealed.

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

"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, n° 1) of that Code, the ancillary penalty of prohibition from exercising the profession of journalist for a period of one to six months.*

3. *The same penalties referred to in paragraph 1 shall also apply to the Director or Deputy Director in charge of the newspaper, trade paper or newspaper, radio or television or online news registered in accordance with Article 5 who, following the request of the author of the publication, has refused to publish statements or rectifications according to the procedures defined in Article 8.*

4. *The offender as well as the editor of the newspaper, even online, registered in accordance with Article 5 of this Law and the persons referred to in Article 57-bis of the Criminal Code are not punishable if statements or rectifications have been published or disseminated, in accordance with the procedure provided for in Article 8 of this law, or even spontaneously.*

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

6. *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".*

7. *The provisions of articles 569 and 597 of the Penal Code shall be applied".*

6. At the end of Article 21 of the Law No. 74 of 8 February 1948 is added the following paragraph:

"For the crime of libel committed through electronic communication, the competent court is the one corresponding to the place of residence of the offended party."

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, a radio or television broadcast, or an on-line newspaper registered

in accordance with Article 5 of Law No. 47 of 8 February 1948, limited to the content produced, published, transmitted or made available on the network by the same editors, 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, limited to the content produced, published, transmitted or made available on the network by the same editors, 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 delegatee(s)."

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.

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."

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 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."