



## **Submission pursuant to Rule 9.2 of the Committee of Ministers' Rules in the Belpietro, Sallusti, Magosso and Brindani group v. Italy (Applications Nos. 43612/10, 22350/13, 59347/11)**

### **INTRODUCTION**

1. ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19) is an independent human rights organisation that works globally to protect and promote the right to freedom of expression and the right to information. ARTICLE 19 monitors national and global trends and develops long-term strategies to address threats and advocates for the implementation of the highest standards of freedom of expression, nationally and globally. In Europe, ARTICLE 19 is part of the Media Freedom Rapid Response (MFRR)<sup>1</sup>, a consortium of civil society and journalist organisations that tracks, monitors, and responds to violations of press and media freedom in EU Member States and candidate countries. This project provides legal and practical support, public advocacy, and information to protect journalists and media workers. ARTICLE 19 also leads CASE<sup>2</sup>, a coalition of NGOs from across Europe united to expose legal harassment and intimidation, protect the rights of public watchdogs, and advocate for comprehensive measures to counter Strategic Lawsuits Against Public Participation (SLAPPs).
2. ARTICLE 19 has been working in Italy both as part of the MFRR consortium and the CASE Italy working group. Our efforts focus on advocating for the decriminalisation and reform of defamation laws in line with international human rights standards on freedom of expression. We monitor, analyse and comment on draft proposals to amend defamation laws and to include a robust framework to prevent SLAPPs. In collaboration with MFRR partners, ARTICLE 19 undertook an urgent mission to Rome on 16-17 May 2024 necessitated by the deteriorating environment for media and journalists, threatened more specifically by the draft proposal to reform criminal defamation, which violates freedom of expression and media freedom, as well as the rising number of SLAPPs against journalists and media.<sup>3</sup>

### **CASE SUMMARIES**

3. The three judgments in the Belpietro group concern interference with the applicants' right to freedom of expression under Article 10 of the European Convention of Human Rights (hereinafter "the Convention") due to their convictions for defamation, ultimately confirmed by the Court of Cassation.

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<sup>1</sup> [Media Freedom Rapid Response](#) (MFRR)

<sup>2</sup> [Coalition against SLAPPs in Europe](#) (CASE)

<sup>3</sup> MFRR, Mission report: [Silencing The Fourth Estate: Italy's Democratic Drift](#), July 2024: findings of our mission are included in our submissions below.

4. The applicants Mr Belpietro, Mr Sallusti and Mr Brindani, directors of daily newspapers, were convicted pursuant to Articles 57-595 of the Criminal Code for having failed in their duties to control the content and presentation of articles written by journalists, including Mr Magosso, second applicant in the Magosso and Brindani case. As regards Mr Magosso, who is a journalist, the conviction was based on the failure to comply with the obligation to verify the facts presented in his report (Article 595 of the Criminal Code). The sanctions were a prison sentence (2012, Sallusti), a suspended prison sentence (2010, Belpietro) and a fine of a criminal nature (2010, Magosso and Brindani).
5. The European Court of Human Rights (hereinafter “the Court”) held that the imposition of a prison sentence (Sallusti), even if suspended (Belpietro), or of a criminal fine (Magosso and Brindani), may have had a significant deterrent effect on and constituted disproportionate interferences with the applicants’ freedom of expression.
6. Italian authorities have not submitted an action plan for the Belpietro case since 10 July 2015 ([DH-DD\(2015\)811](#)), which provides limited information on general measures. Hence, this submission provides updates on the most relevant developments concerning defamation in Italy and comments on the Government of Italy’s action plan concerning general measures.

## **GENERAL MEASURES**

7. This submission provides information on the following issues:
  - A. Failure to amend domestic legislation on defamation in line with Convention standards
  - B. Proposed problematic defamation reform (Balboni Bill)
  - C. Other concerns

### **A. FAILURE TO AMEND DOMESTIC LEGISLATION ON DEFAMATION**

8. ARTICLE 19 submits that defamation legislation remains a significant concern for freedom of expression in Italy. Despite clear indication from the Court in the Belpietro group of cases that prison sentences are incompatible with the Convention and violate Article 10 of the Convention, Italian defamation laws have yet to be reformed.
9. Defamation remains a criminal offense under Article 595 of the Penal Code, punishable by a fine of up to EUR 1,032 or imprisonment of up to one year. Allegations of specific facts can increase the penalty to up to two years’ imprisonment or a fine of EUR 2,065. Targeting political, administrative, or judicial bodies increases the penalty by one-third. Defamation through the press, considered aggravated under both the Penal Code and Press Law, incurs a fine of at least EUR 516 or imprisonment from six months to three years under Article 595. The Press Law mandates stricter penalties, with fines convertible to prison sentences under certain conditions, while the cap on fines is defined in Article 24 of the Penal Code.

10. Imprisonment for defamation through the press remained applicable under the Press Law until 2020, when the Constitutional Court deemed Article 595(3)<sup>4</sup> of the Criminal Code and Article 13 of the Press Law<sup>5</sup> – as far as it provides for the penalty of imprisonment for defamation through the press – unconstitutional and incompatible with Article 10 of the Convention.<sup>6</sup> The Constitutional Court stressed that legislative reform was necessary and should be undertaken by Parliament, not by the Constitutional Court. The Court effectively postponed its decision for one year, stipulating that if Parliament had not passed legislation to amend the law by 22 June 2021, then the Court itself would have had to abolish prison sentences. The Court also temporarily suspended criminal defamation proceedings in the cases under examination still pending before it.<sup>7</sup>
  
11. Although several bills were submitted to and subsequently discussed in Parliament, none of them were adopted into law.<sup>8</sup> Consequently, on 22 June 2021, the Constitutional Court declared Article 13 of the Press Law non-compliant with the Constitution.<sup>9</sup> However, it found Article 595(3) of the Penal Code compatible with the Constitution, as it allows the judge to order imprisonment only in cases of “exceptional severity”. The Constitutional Court renewed its call for Parliament to promote a reform balancing freedom of expression and protection of individual reputation.<sup>10</sup>
  
12. In addition to the Court, other bodies in the Council of Europe system have long been expressing concerns over Italy’s problematic defamation legislation. The Venice Commission in 2013 concluded that “criminal defamation provisions currently in force in the Italian legislation do not fully meet the European standards on freedom of expression.”<sup>11</sup> In 2014, Council of Europe Commissioner Nils Muižnieks joined the UN Special Rapporteur on Freedom of Expression Frank La Rue and the OSCE Representative on Freedom of the Media Dunja Mijatović to call on Italian authorities “to stop considering defamation as a criminal offence altogether” and to “reform anachronistic legislation which stifles criticism and muzzles the media toward a modern set of provisions which would strengthen free expression.”<sup>12</sup>
  
13. Efforts to draft comprehensive defamation law reforms have been a long-standing issue with no initiatives resulting in legislative amendments to date. ARTICLE 19 submits that this delay

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<sup>4</sup> Criminal Code, Article 595 (3) on defamation

<sup>5</sup> Law no. 47 of 8 February 1948, Press Law, Article 13 on defamation through the press

<sup>6</sup> Constitutional Court, [order 132/2020 of 9th June 2020](#).

<sup>7</sup> ARTICLE 19, [Italy: Constitutional Court refers decision on abolishing prison sentences for criminal defamation to Parliament, 10 June 2020](#)

<sup>8</sup> See e.g. [Draft Law on the initiative of Senator Caliendo](#), Amendments to the Law of 8 February 1948, n. 47, to the Penal Code, the Code of Criminal Procedure, the Code of Civil Procedure and the Civil Code, in matters of defamation, defamation by the press or other means of dissemination, insult and conviction of the plaintiff as well as professional secrecy, and provisions for the protection of the defamed subject.

<sup>9</sup> Constitutional Court, [Decision of 22 June 2021 n 150](#).

<sup>10</sup> ARTICLE 19, [Italy: Defamation laws must be reformed](#), 23 June 2021.

<sup>11</sup> Venice Commission, [Opinion on the Legislation on Defamation of Italy](#), Adopted by the Venice Commission at its 97th Plenary Session, (Venice, 6-7 December 2013)

<sup>12</sup> Corriere della Sera, [Defamation in Italy : a draft law to be changed](#), 8 June 2014

significantly erodes a free and independent press and has led to an increase in SLAPPs against journalists (see more below).<sup>13</sup>

## **B. PROPOSED PROBLEMATIC DEFAMATION REFORM (BALBONI BILL)**

14. In September 2022, MP Balboni<sup>14</sup> put forward a proposal to amend the Criminal Code, the Criminal Procedure Code, and the Press Law. Other MPs from opposition parties (Verini, Martella, Lopreiato and Mirabelli) put forward proposals to introduce measures to curb the abusive practice of vexatious litigation targeting journalists.<sup>15</sup> ARTICLE 19 expressed serious concerns over these proposals, which failed to meet international standards on freedom of expression. None included full decriminalisation of defamation and would have increased criminal fines and additional sanctions.<sup>16</sup>
15. The Balboni bill is currently under discussion in the Senate Justice Committee. Its stated aim is to abolish prison sentences for defamation in line with Constitutional Court's decisions and European Court's rulings in Belpietro and Sallusti cases. However, ARTICLE 19 highlighted the following problems with the Bill:
  - i) First, the Balboni bill does not fully decriminalise defamation. Although it does abolish crime of imprisonment, it proposes significantly increasing fines for criminal defamation: from €5,000 to €10,000 and from €10,000 to €50,000. Currently, fines for criminal defamation are in the range of a few thousand euros. An increase in fines of any amount contradicts the interpretation of Article 10 of the Convention as provided by the European Court. The Court has repeatedly stressed that penalties for defamation must consider the defendant's economic situation to avoid disproportionate fines that could have a chilling effect on freedom of expression and media freedom.
  - ii) Second, the Balboni bill also introduces additional criminal sanctions, such as suspending journalists from their profession for up to six months, which can deter criticism and contradict European Court practices. Similarly, the introduction of correction as a remedy for journalists, directors, and/or editors-in-chief is deeply problematic as a measure to mitigate criminal culpability and contradicts the call for decriminalisation of defamation. Remedies such as apologies and corrections should be part of broader civil defamation law reform.
  - iii) Third, the bill allows for the sanction of disciplinary measures, to be imposed by the National Council of Journalists, in criminal defamation cases. ARTICLE 19 notes that there is no place in criminal law for provisions mandating what measures a professional industry association should impose on their members for violation of ethical standards. This should remain solely in the realm of self-regulation managed and balanced by the National Council of Journalists and should not be subject to statutory regulation.

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<sup>13</sup> ARTICLE 19, [The need to strengthen the protection of the right to freedom of expression and information through legal reforms in Italy](#), December 2022.

<sup>14</sup> Senate of the Republic, [DDL. 466 of 16 January 2023](#).

<sup>15</sup> ARTICLE 19, Italy: [Half-baked defamation reforms will not protect journalists](#), May 2023

<sup>16</sup> ARTICLE 19, Italy: [Half-baked defamation reforms will not protect journalists](#), May 2023

All in all, the Balboni bill fails to meet the comprehensive defamation reform mandated by the Constitutional Court and the standard set by the European Court in its jurisprudence.

### C. OTHER CONCERNS

16. ARTICLE 19 further notes that the limited information on general measures undertaken by the Italian government since July 2015 should be also seen in the context of other problematic applications of defamation laws.
17. We note with concern a widespread use of defamation legislation in Italy against journalists, many of which could be considered abuse of judicial system, employed to harass journalists (so called 'strategic litigation against public participation' or SLAPPs). According to the statistics of the Italian National Statistics Institute (Istat), in 2017, a total of 9,479 proceedings for defamation were initiated against journalists, 60% of which were dismissed after preliminary investigation and 6.6% of which went to trial. Plaintiffs are often public figures – politicians, businessmen, or individuals involved in organised crime. Since the current government took office, SLAPP cases brought by public officials and Cabinet members against journalists have dramatically increased.<sup>17</sup>
18. In the context of the ongoing discussion about reform of defamation law (the Balboni bill), there is no government proposal that seeks to introduce measures to effectively counter SLAPPs. This failure is striking in light of emerging standards on SLAPPs from the Council of Europe and the EU (the EU Directive against SLAPPs, EU Directive 2024/1069).
19. We also observe that in her report on Italy following her visit to the country in June 2023, Council of Europe Commissioner Dunja Mijatović expressed similar concerns highlighting

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<sup>17</sup> MFRR, [Silencing The Fourth Estate: Italy's Democratic Drift](#), July 2024. See in particular pages 15-16 for a list of defamation cases registered by MFRR in Italy until July 2024. Summaries of the cases can be found in [the MFRR Monitor website](#). We wish to highlight the following ones brought by members of the current Cabinet:

- In 2023 the trial began for a lawsuit initiated in 2018 by current minister of Transportation [Matteo Salvini against Roberto Saviano](#); the lawsuit for criminal defamation is still ongoing;
- In February 2023, Undersecretary at the Ministry of Labour [Claudio Durigon sued Domani](#). *Domani's* newsroom learned about the lawsuit when two police officers handed them a seizure order directed at one of *Domani's* articles. The lawsuit was [dismissed by Rome's judge of preliminary investigations](#);
- In May 2023, [Minister of Enterprises and Made in Italy Adolfo Urso](#) announced he would sue *Report*;
- In June 2023, [Minister of Tourism Daniela Santanché](#) announced her intention to sue *Report*;
- In August 2023, Arianna Meloni, wife of Minister of Agriculture Francesco Lollobrigida and sister of the Prime Minister Giorgia Meloni, currently secretary of the political section of leading coalition party Fratelli d'Italia, filed a lawsuit against [Il Fatto Quotidiano's satirical illustrator Mario Natangelo](#);
- In October 2023, [Senate President Ignazio La Russa](#) announced he would sue *Report*;
- In October 2023, Italian writer [Roberto Saviano was convicted for criminal defamation in a lawsuit initiated by Giorgia Meloni](#);
- In January 2024, [Minister of Economy Giancarlo Giorgetti](#) sued *Report*;
- In June 2024, Minister of Enterprises and Made in Italy Adolfo Urso filed a defamation lawsuits [against Il Foglio and Il Riformista](#);
- In June 2024, [Meloni's party Brothers of Italy sued Report](#);
- With a trial scheduled to start in September 2024, PM Giorgia Meloni [initiated a lawsuit against Domani](#) in October 2021. The lawsuit was subsequently withdrawn in July 2024.

there have been “thousands of lawsuits filed against Italian journalists, only a few of them end with a conviction” and urged Italian authorities “to undertake a comprehensive reform of the relevant legal framework in order to fully decriminalise defamation and ensure that lawsuits are not used as SLAPPs”.<sup>18</sup>

20. Further, in July 2024, the Rule of Law report published by the EU Commission shared concerns over the lack of “major developments on the proposal to reform the press defamation regime”.<sup>19</sup> It further noted that “the increasing prevalence of strategic lawsuits against public participation (SLAPPs) cases remain an issue”. It recommended that Italy “continue the legislative process on the draft reform on defamation (...) while avoiding negative impacts on press freedom and ensuring European standards on journalist protection”.<sup>20</sup>

## CONCLUSION AND RECOMMENDATIONS

21. ARTICLE 19 finds that the application of criminal defamation laws against journalists has not only persisted but also increased since the 2013 decision of the European Court in the Belpietro case. None of the proposed defamation reforms addressed the shortcomings identified in the decision and subsequent numerous reports on the state of defamation law in Italy. Current legislation and practices continue to undermine compliance with European Convention standards and the pending legislative reforms are insufficient to address the existing lack of compliance. **This means that the Italian Government has not taken the necessary general measures in the Belpietro case.**
22. Having in mind the arguments set out above, ARTICLE 19 recommends the following:
- Articles 595 of the Criminal Code (defamation) and Article 13 of the Press Law (defamation through the press) should be repealed;
  - Proposed amendments to Italian defamation legislation (Balboni bill) should be immediately withdrawn;
  - A new reform should be initiated and should aim at undertaking a comprehensive revision of the existing framework on the protection of reputation to bring it in line with international and regional human rights law, providing for: a reform of civil defamation laws to address existing gaps and inefficiencies and introduction of a robust framework to prevent strategic lawsuits against public participation (SLAPPs), incorporating recommendations from the Council of Europe and standards provided by EU Directive 2024/1069 against SLAPPs.
23. We also recommend that the Committee of Ministers request that the Government of Italy collect and provide the following information:
- Up to date statistics on the number of defamation cases initiated against journalists under Article 595 of the Criminal Code and Article 13 of the Press Law, the number of

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<sup>18</sup> Commissioner For Human Rights of The Council of Europe, Dunja Mijatović, [Report Following Her Visit To Italy From 19 To 23 June 2023](#), November 2023

<sup>19</sup> EU Commission, [2024 Rule of Law Report Country Chapter on the rule of law situation in Italy](#), July 2024

<sup>20</sup> Ibid. page 1-2

cases dismissed after preliminary investigation, the number of cases that went to trial and the number of decisions delivered by courts divided per level of instance (first and second-instance Court and Cassation Court).

- Statistics on the categories of plaintiffs, particularly members of the Ruling Parties and Members of the current Government bringing suits against journalists and media outlet, particularly those that are currently pending before courts.
- Plans to train judges and judicial officers on SLAPPs as provided by the CM/Rec (2024)2 on countering the use of SLAPPs.