

ARTICLE19

A stylized map of Europe is shown in a light yellow color against a darker yellow background. A black location pin is placed over the country of Italy. The text 'Italy: Responding to 'hate speech'' is overlaid on the map in white.

Italy: Responding to 'hate speech'

2018

Country Report

ARTICLE 19

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This report was produced with financial support from the Rights, Equality and Citizenship (REC) Programme of the European Union. The European Commission does not necessarily share the opinions expressed within the report. ARTICLE 19 bears the sole responsibility for the content.

The report was produced as part of “Media Against Hate”, a Europe-wide campaign initiated by the European Federation of Journalists and a coalition of civil society organisations, including the Media Diversity Institute (MDI), ARTICLE 19, the Croatian Journalists Association (CJA), Community Media Forum Europe (CMFE), Community Medien Institut (COMMIT) and Cooperazione per lo Sviluppo dei Paesi Emergenti (COSPE). For more information about the campaign see: <http://europeanjournalists.org/mediaagainsthate/>

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Executive summary

This report examines both legislation and practices related to ‘hate speech’ in Italy, with a particular focus on the media. It examines the compliance of the respective legislation with international freedom of expression standards and offers recommendations for its improvement.

‘Hate speech’ is an issue of growing concern in Italy, catalysed in recent years by a number of factors. These include: the surge in migrants and refugees arriving from different countries and their struggle for integration; the incendiary tones used by political parties and movements within public debates; and biased media reporting on issues related to diversity and minority groups. The problem of ‘hate speech’ has been further exacerbated by the spread of comments in online forums and on articles and social media platforms that incite hatred and violence. Alongside the increased instances of ‘hate speech’, Italy has experienced an increase in the number of reported ‘hate crimes’ based on ethnic, racial, religious, or sexual grounds.

Despite robust protection of both the right to freedom of expression and equality in Italian law, the existing legal framework on ‘hate speech’ does not fully comply with international human rights standards. In particular, the protected characteristics exhaustively listed in criminal law concerning the most serious forms of ‘hate speech’ are limited to race, ethnic origin, nationality, or religion, and proposals to expand this protection have stalled in parliament. Further, the prohibitions of incitement in criminal law do not follow international standards in this area; and a range of other vague offences are prohibited by the criminal law.

The application and interpretation of the existing ‘hate speech’ provisions contained in criminal law are also inconsistent. Italian courts often consider the racial or ethnic bias as an aggravating circumstance in cases of criminal defamation, or consider them under the crime of ‘criminal conspiracy’ carried out by organised groups on the Internet via blogs or social media.

In addition to protections available under criminal law, victims of ‘hate speech’ can either initiate proceedings within the criminal trial to claim compensation for damages or pursue a separate civil defamation lawsuit. Administrative pecuniary sanctions are imposed in cases of defamation of religion/blasphemy, and a system of police warnings was established by a recent law protecting minors against ‘cyberbullying’.

Two equality institutions play an important role in countering ‘hate speech’ in Italy through monitoring and positive measures: these are the National Office Against

Racial Discrimination (UNAR) and the Observatory for Security Against Acts of Discrimination (OSCAD). UNAR's tasks include assisting victims of discrimination, receiving and monitoring complaints, promoting research in the area, running training courses, campaigning, and reporting annually to parliament and the government. OSCAD also receives discrimination complaints. UNAR and OSCAD exchange information and data on hate crimes and have previously organised joint training activities and awareness-raising campaigns.

There are several relevant laws that can be used to respond to 'hate speech' in the media. The legislation also provides measures for the promotion of diversity and inclusion of minorities in the media (though the protection is restricted to historically acknowledged linguistic minorities). The applicable media legislation prohibits all content that contains "incitement to hatred in any way motivated by" or that "instigate intolerant behaviours based on" differences of race, sex, religion, or nationality. Special provisions on the protection of minors are established in the Code on TV and Minors, and incorporated by law. The broadcast media regulator, Italian Communications Regulatory Authority (AGCOM), is tasked with enforcing these provisions. However, AGCOM has limited powers to intervene and issue sanctions. For the most part, AGCOM only intervenes when violations regard the special provisions for the protection of minors. Further, AGCOM has no legal powers to regulate content hosted by online intermediaries. It has, however, set up the Permanent Observatory of Guarantees and Protection of Minors and the Fundamental Rights of the Person on the Internet, which monitors cases of incitement to hatred, threats, harassment, and cyberbullying on the Internet and drafts co-regulatory codes of conduct in cooperation with Internet companies and social media platforms. Finally, AGCOM has recommended the amendment of the existing European Union (EU) E-Commerce Directive to compel Internet hosts and providers to adopt self-regulatory or co-regulatory codes of conduct to monitor third-party content, with a view to protecting Internet users – and minors in particular – from harassment and incitement to hatred.

With regard to print media, the updated 2016 Ethical Code of Conduct of Journalists, approved by the National Press Council, includes among the fundamental duties of the journalistic profession the duty to respect "the rights and dignity of sick people or people with mental, physical, intellectual or sensorial disabilities". The code also incorporates the Charter of Rome, a specific code of conduct for journalists who write on immigration and asylum-related themes. However, the disciplinary sanctions for violations of the code are rarely applied by the competent supervising bodies, causing widespread criticism of their effectiveness as a deterrent.

The code of conduct of the Italian advertising self-regulatory organisation, the Institute of Advertising Self-Regulation (IAP), does not include any explicit reference to 'hate speech'. However, it establishes that all commercial communications must not offend "moral, civil and religious convictions" and "must avoid all sorts of discrimination, including gender-related".

Summary of recommendations:

- All relevant legislation – in particular the criminal law provisions – should be revised for their compliance with international human rights standards applicable to ‘hate speech’;
- The advocacy of discriminatory hatred that constitutes incitement to hostility, discrimination, or violence should be prohibited in line with Articles 19(3) and 20(2) of the International Covenant on Civil and Political Rights (ICCPR), establishing a high threshold for limitations on free expression as set out in the Rabat Plan of Action, as well as prohibitions on direct and public incitement to genocide and incitement to crimes against humanity;
- The protective scope of any measures to address ‘hate speech’ should encompass all protected characteristics recognised under international human rights law, and not be limited to the present protected characteristics of race, ethnic origin, nationality, or religion. In particular, the list of protected characteristics should be revised in light of the right to non-discrimination as provided under Article 2(1) and Article 26 of the ICCPR;
- Defamation should be fully decriminalised and replaced by appropriate civil remedies. Moreover, the Italian authorities should refrain from applying provisions of defamation on cases of ‘hate speech’ since the purpose of defamation laws is to protect individuals from false statements of fact, which cause damage to their reputation. Legal actions for defamation do not require an individual to show any ‘advocacy of hatred’, and should be distinguished from ‘hate speech’;
- The Italian government should abolish all other speech offences that can be inappropriately applied in cases of ‘hate speech’ and which, moreover, also fail to meet international freedom of expression standards. These include, in particular, Article 341-bis of the Criminal Code (insult to public officials) and Article 724 of the Criminal Code (defamation of religion/blasphemy);
- The guarantees of media pluralism for the promotion of diversity and inclusion of minorities should not be limited to the protection of ‘linguistic’ minorities. Provisions and policies should also address ensuring adequate access to media coverage of other minorities, in particular, racial, ethnic, and religious groups, people with disabilities, and LGBTQI individuals;
- The Italian government should ensure – both in law and in practice – that the equality body, UNAR, is fully independent and autonomous. In particular, it should not operate within a government department, but it should act as an advisory body to the authorities in drafting legislation, regulations, and practices against ‘hate speech’ and ensuring their compliance with the international human rights instruments to which Italy is party. UNAR should

also improve its systems for the collection of data on bias-motivated offences in order to include information on the different types of hate crimes reported, the number of prosecutions, and the results of the subsequent legal proceedings;

- The state and broadcasting regulatory body, AGCOM, should continue its constructive cooperation with media outlets, Internet intermediaries, and social media platforms to respond to ‘hate speech’, including online. Any measures developed in this area should not hold Internet intermediaries liable for refusing to take actions that could potentially infringe their users’ freedom of expression, unless they are specifically ordered to do so by a court or by another competent and truly independent body mandated by law. When promoting codes of conduct in this area, AGCOM should advocate for Internet intermediaries to periodically review their terms of services and community standards, disclose details regarding content removal requests, and be transparent about the reasoning behind decisions to remove or retain content subject to removal requests. Proposed redress mechanisms should be available and accessible to all the parties involved in the removal of content deemed in breach of the applicable codes of conduct;
- The Italian government should develop and periodically review a comprehensive plan on promoting a culture of tolerance, equality, diversity, and mutual respect in society, including in schools. This should include but not be limited to improving media literacy;
- Public officials, including politicians, should realise that they play a leading role in recognising and promptly speaking out against intolerance and discrimination, including instances of ‘hate speech’. This requires recognising and rejecting the conduct itself, as well as the prejudices of which it is symptomatic, expressing sympathy and support to the targeted individuals or groups, and framing such incidents as harmful to the whole of society. These interventions are particularly important when inter-communal tensions are high, or are susceptible to being escalated, and when political stakes are also high, e.g. in the run-up to elections;
- A multi-stakeholder strategy to counter ‘hate speech’ in all its forms and in line with the international human rights obligations should be discussed and adopted in partnership by all relevant stakeholders, including state institutions, civil society organisations, broadcast and print media, as well as Internet platforms and operators;
- Journalists’ organisations should recognise their important role in this area and intensify their efforts to provide adequate responses. In particular, they should organise regular training courses and updates for professional and trainee journalists on the internationally binding human rights standards on ‘hate speech’ and freedom of expression and on relevant ethical codes of conduct. Journalists’ organisations should also ensure that ethical codes of conduct

on 'hate speech' are effectively implemented; the codes should be widely publicised and internalised by journalists and media organisations in order to ensure a full compliance with them. Effective measures should be undertaken to address violation of the codes.

Introduction

‘Hate speech’ remains a great concern in Italy. Over the last two decades, the country has experienced a significant rise in the number of recorded episodes of hate crime and incitement to hatred against individuals based on ethnic, racial, religious, or sexual grounds.

One of the main drivers of this trend appears to be the long standing economic crisis in the country, compounded by the surge in arrivals of migrants and refugees and their subsequent struggle to be integrated within the local communities. Right-wing parties and xenophobic movements have further fuelled hostility towards ethnic, national, and religious minorities in order to gain political support.¹ Most recently, the political campaign against refugees and migrants played a considerable role in March 2018 elections; where three centre-right parties (North League, Brothers of Italy and Forza Italia) gained 37% of votes.² Generally, fewer ‘hate speech’ based on sexual orientation or gender identity are reported, although according to official statistics, discrimination on these grounds is still of significance.³

However, deterioration in the tone of public discourse in Italy is not new. Some political parties pioneered the use of xenophobic and sexist language in late 1980s and early 1990s; migrants and refugees have been targeted by ‘hate speech’ even when their numbers were low and their presence had not been considered particularly problematic. Due to the lack of comprehensive and effective response by the Italian government and public institutions and concentration of media ownership, the problems in this area have increased.

The Italian media have often played a central role in portraying ethnic and religious minorities as potential fundamentalists and terrorists, and have often held ethnic minorities, particularly members of the Roma and Sinti communities, accountable for the increase of low level criminality in urban areas. This has further fuelled the spread of hateful comments in online media forums, in comments on articles, and on social media. Moreover, representatives of prominent political parties and movements frequently use inflammatory or derogatory language in speeches against their political opponents, often scornfully referencing their physical appearance, presumed sexual orientation, or ethnic origin.⁴

In the last few years, the overwhelming majority of ‘hate speech’ reported to the relevant monitoring and law enforcement authorities appeared online, either on traditional media websites, via social network platforms (e.g. Facebook or Twitter), or on video sharing platforms (e.g. YouTube). Instances of bias-motivated ‘cyberbullying’ have become an important issue of public concern, attracting the attention of Italian legislators. Additionally, motivated by fears regarding the spread of malicious ‘fake news’, believed to be able to cause alarm, panic, or outrage amongst readers and viewers, attempts have been made to curb the trend of ‘hate speech’ and cyberbullying in Italy through legislative means.

Recent calls and efforts to limit ‘hate speech’ have thus focused heavily on online expression. In May 2016, the President of the Chamber of Deputies of the Italian Parliament, Laura Boldrini, launched a Special Parliamentary Committee on Intolerance, Xenophobia, Racism and Hate to gather data, take evidence from experts and stakeholders, and formulate concrete proposals to counter the phenomenon.⁵ Subsequently, in February 2017, Ms Boldrini wrote an ‘open letter’ to Facebook CEO, Mark Zuckerberg, calling on Facebook and social media platforms in general to be more effective and timely in monitoring their platforms and removing content clearly inciting hatred or violence.⁶ At the same time, Ms Boldrini launched a public petition calling on schools and universities, media, advertisers, and social media to strengthen their cooperation with public institutions and invest more in human resources and technologies to counter the spread of ‘fake news’, which is considered to be one of the most powerful tools in spreading hate and distrust amongst the public.⁷

In order to respond to the abovementioned issues in Italy, it is important that legislation, policies, and practices fully comply with international human rights standards, particularly those on the right to freedom of expression. Hence, this report examines both legislation, policies, and practices⁸ relevant to ‘hate speech’ in Italy, with a particular focus on the media. It examines the compliance of the respective legislation with international freedom of expression standards and offers recommendations for its improvement.

The report is a part of a broader ARTICLE 19 project carried out in six EU countries (Austria, Germany, Hungary, Italy, Poland, and the United Kingdom) to identify commonalities and differences in national approaches to ‘hate speech’, specifically in the media, recommend ‘good practices’ for replication, and identify concerns which should be addressed.

International human rights standards

In this report, the review of the Italian framework on ‘hate speech’ is informed by international human rights law and standards, in particular regarding the mutually interdependent and reinforcing rights to freedom of expression and equality.

The right to freedom of expression

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights (UDHR)⁹ and given legal force through Article 19 of the International Covenant on Civil and Political Rights (ICCPR).¹⁰

The scope of the right to freedom of expression is broad. It requires States to guarantee to all people the freedom to seek, receive, or impart information or ideas of any kind, regardless of frontiers, through any media of a person’s choice. The United Nations (UN) Human Rights Committee (HR Committee), the treaty body of independent experts monitoring States’ compliance with the ICCPR, has affirmed the scope extends to the expression of opinions and ideas that others may find deeply offensive,¹¹ and this may encompass discriminatory expression.

While the right to freedom of expression is fundamental, it is not absolute. A State may, exceptionally, limit the right under Article 19(3) of the ICCPR, provided that the limitation is:

- **Provided for by law**, so any law or regulation must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly;
- **In pursuit of a legitimate aim**, listed exhaustively as: respect of the rights or reputations of others; or the protection of national security or of public order (*ordre public*), or of public health or morals; or
- **Necessary in a democratic society**, requiring the State to demonstrate in a specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.¹²

Thus, any limitation imposed by the State on the right to freedom of expression, including limiting ‘hate speech’, must conform to the strict requirements of this three-part test. Further, Article 20(2) of the ICCPR provides that any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence must be prohibited by law (see below).

At the European level, Article 10 of the European Convention on Human Rights (European Convention)¹³ protects the right to freedom of expression in similar terms to Article 19 of the ICCPR, with permissible limitations set out in Article

10(2).¹⁴ Within the EU, the right to freedom of expression and information is guaranteed in Article 11 of the Charter of Fundamental Rights of the European Union.

The right to equality

The right to equality and non-discrimination is provided in Articles 1, 2, and 7 of the UDHR.¹⁵ These guarantees are given legal force in Articles 2(1) and 26 of the ICCPR, obliging States to guarantee equality in the enjoyment of human rights, including the right to freedom of expression and equal protection of the law.

At the European level, the European Convention prohibits discrimination in Article 14 and, more broadly, in Protocol No. 12.

Limitations on ‘hate speech’

While ‘hate speech’ has no definition under international human rights law, the expression of hatred towards an individual or group on the basis of a protected characteristic can be divided into three categories, distinguished by the response international human rights law requires from States:¹⁶

- Severe forms of ‘hate speech’ that international law *requires* States to prohibit, including through criminal, civil, and administrative measures, under both international criminal law and Article 20(2) of the ICCPR;
- Other forms of ‘hate speech’ that States *may* prohibit to protect the rights of others under Article 19(3) of the ICCPR, such as discriminatory or bias-motivated threats or harassment; or
- ‘Hate speech’ that is lawful and should therefore be protected from restriction under Article 19(3) of the ICCPR, but which nevertheless raises concerns in terms of intolerance and discrimination, meriting a critical response by the State.

Obligation to prohibit

Article 20(2) of the ICCPR obliges States to prohibit by law “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. In General Comment No. 34, the HR Committee stressed that while States are *required* to prohibit such expression, these limitations must nevertheless meet the strict conditions set out in Article 19(3).¹⁷

The Rabat Plan of Action,¹⁸ adopted by experts following a series of consultations convened by the UN Office of the High Commissioner for Human Rights (OHCHR), advances authoritative conclusions and recommendations for the implementation of Article 20(2) of the ICCPR.¹⁹

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- **Incitement.** Prohibitions should only focus on the advocacy of discriminatory hatred that constitutes incitement to hostility, discrimination, or violence, rather than the advocacy of hatred without regard to its tendency to incite action by the audience against a protected group.
 - **Six-part threshold test.** To assist in judicial assessments of whether a speaker intends and is capable of having the effect of inciting their audience to violent or discriminatory action through the advocacy of discriminatory hatred, six factors should be considered:
 - **Context:** the expression should be considered within the political, economic, and social context prevalent at the time it was communicated, for example the existence or history of conflict, existence or history of institutionalised discrimination, the legal framework, and the media landscape;
 - **Identity of the speaker:** the position of the speaker as it relates to their authority or influence over their audience, in particular if they are a politician, public official, religious or community leader;
 - **Intent** of the speaker to engage in advocacy to hatred; intent to target a protected group on the basis of a protected characteristic, and knowledge that their conduct will likely incite the audience to discrimination, hostility, or violence;
 - **Content of the expression:** what was said, including the form and the style of the expression, and what the audience understood by this;
 - **Extent and magnitude of the expression:** the public nature of the expression, the means of the expression, and the intensity or magnitude of the expression in terms of its frequency or volume; and
 - **Likelihood of harm occurring, including its imminence:** there must be a reasonable probability of discrimination, hostility, or violence occurring as a direct consequence of the incitement.
 - **Protected characteristics.** States' obligations to protect the right to equality more broadly, with an open-ended list of protected characteristics, supports an expansive interpretation of the limited protected characteristics in Article 20(2) of the ICCPR to provide equal protection to other individuals and groups who may similarly be targeted for discrimination or violence on the basis of other recognised protected characteristics.
 - **Proportionate sanctions.** The term "prohibit by law" does not mean criminalisation; the HR Committee has said it only requires States to "provide appropriate sanctions" in cases of incitement.²⁰ Civil and administrative penalties will in many cases be most appropriate, with criminal sanctions an extreme measure of last resort.

The Committee on the Elimination of all forms of Racial Discrimination (the CERD Committee) has also based their guidance for respecting the obligation to prohibit certain forms of expression under Article 4 of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) on this test.²¹

At the European level, the European Convention does not contain any obligation on States to prohibit any form of expression, as under Article 20(2) of the ICCPR. However, the European Court of Human Rights (European Court) has recognised that certain forms of harmful expression must necessarily be restricted to uphold the objectives of the European Convention as a whole.²² The European Court has also exercised particularly strict supervision in cases where criminal sanctions have been imposed by the State, and in many instances it has found that the imposition of a criminal conviction violated the proportionality principle.²³ Recourse to criminal law should therefore not be seen as the default response to instances of harmful expression if less severe sanctions would achieve the same effect.

At the EU level, the Council's framework decision "on combating certain forms and expressions of racism and xenophobia by means of criminal law"²⁴ requires States to sanction racism and xenophobia through "effective, proportionate and dissuasive criminal penalties". It establishes four categories of incitement to violence or hatred offences that States are required to criminalise with penalties of up to three years. States are afforded the discretion of choosing to punish only conduct which is carried out in "a manner likely to disturb public order" or "which is threatening, abusive, or insulting", implying that limitations on expression not likely to have these negative impacts can legitimately be restricted. These obligations are broader and more severe in the penalties prescribed than the prohibitions in Article 20(2) of the ICCPR, and do not comply with the requirements of Article 19(3) of the ICCPR.²⁵

Permissible limitations

There are forms of 'hate speech' that target an identifiable individual, but that do not necessarily advocate hatred to a broader audience with the purpose of inciting discrimination, hostility, or violence. This includes discriminatory threats of unlawful conduct, discriminatory harassment, and discriminatory assault. These limitations must still be justified under Article 19(3) of the ICCPR.

Lawful expression

Expression may be inflammatory or offensive, but not meet any of the thresholds described above. This expression may be characterised by prejudice and raise concerns over intolerance, but does not meet the threshold of severity at which restrictions on expression are justified. This also includes expression related to the denial of historical events, insult of State symbols or institutions, and other forms of expression that some individuals and groups might find offensive.

This does not preclude States from taking legal and policy measures to tackle the underlying prejudices of which this category of ‘hate speech’ is symptomatic, or from maximising opportunities for all people, including public officials and institutions, to engage in counter-speech.

Freedom of expression online

International law

At the international level, the UN Human Rights Council (HRC) recognised in 2012 that the “same rights that people have offline must also be protected online”.²⁶ The HR Committee has also made clear that limitations on electronic forms of communication or expression disseminated over the Internet must be justified according to the same criteria as non-electronic or ‘offline’ communications, as set out above.²⁷

While international human rights law places obligations on States to protect, promote, and respect human rights, it is widely recognised that business enterprises also have a responsibility to respect human rights.²⁸ Importantly, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Special Rapporteur on FOE) has long held that censorship measures should never be delegated to private entities.²⁹ In his June 2016 report to the HRC,³⁰ the Special Rapporteur on FOE enjoined States not to require or otherwise pressure the private sector to take steps that unnecessarily or disproportionately interfere with freedom of expression, whether through laws, policies, or extra-legal means. He further recognised that “private intermediaries are typically ill-equipped to make determinations of content illegality”,³¹ and reiterated criticism of notice and take-down frameworks for “incentivising questionable claims and for failing to provide adequate protection for the intermediaries that seek to apply fair and human rights-sensitive standards to content regulation”, i.e. the danger of “self- or over-removal”.³²

The Special Rapporteur on FOE recommended that any demands, requests, and other measures to take down digital content must be based on validly enacted law, subject to external and independent oversight, and demonstrate a necessary and proportionate means of achieving one or more aims under Article 19(3) of the ICCPR.³³

In their 2017 Joint Declaration on “freedom of expression, ‘fake news’, disinformation and propaganda”, the four international mandates on freedom of expression expressed concern at “attempts by some governments to suppress dissent and to control public communications through [...] efforts to ‘privatise’ control measures by pressuring intermediaries to take action to restrict content”.³⁴

The Joint Declaration emphasises that intermediaries should never be liable for any third party content relating to those services unless they specifically intervene in that content or refuse to obey an order adopted in accordance with due process guarantees by an independent, impartial, authoritative oversight body (such as a court) to remove it, and they have the technical capacity to do so. They also outlined the responsibilities of intermediaries regarding the transparency of and need for due process in their content-removal processes.

European law

At the EU level, the E-Commerce Directive requires that Member States shield intermediaries from liability for illegal third party content where the intermediary does not have actual knowledge of illegal activity or information and, upon obtaining that knowledge, acts expeditiously to remove or disable access to the content at issue.³⁵ The E-Commerce Directive prohibits Member States from imposing general obligations on intermediaries to monitor activity on their services.³⁶ The regulatory scheme under the E-Commerce Directive has given rise to so-called ‘notice-and-takedown’ procedures, which have been sharply criticised by the special mandates on freedom of expression for their lack of clear legal basis and basic procedural fairness.

The limited shield from liability for intermediaries provided by the E-Commerce Directive has been further undermined by the approach of the European Court. In *Delfi AS v. Estonia*, the Grand Chamber of the European Court found no violation of Article 10 of the European Convention where a national court imposed civil liability on an online news portal for failure to remove “clearly unlawful” comments posted to the website by an anonymous third party, even without notice being provided.³⁷ A joint dissenting opinion highlighted that this “constructive notice” standard contradicts the requirement of actual notice in Article 14 para 1 of the E-Commerce Directive, necessitating intermediaries to actively monitor all content to avoid liability in relation to specific forms of content, thus additionally contradicting Article 5 of the E-Commerce Directive.³⁸

Decisions subsequent to *Delfi AS* appear to confine the reasoning to cases concerning ‘hate speech’. More recently, the European Court rejected as inadmissible a complaint that the domestic courts had failed to protect the applicant’s right to privacy by refusing to hold a non-profit association liable for defamatory comments posted to their website by a third party. The Court noted that the comments were not ‘hate speech’ or direct threats and were removed upon notice (though a formal notice-and-takedown procedure was not in place).³⁹ The position and resources of the intermediary were also relevant factors.⁴⁰

Lastly, the 2016 European Commission’s Code of Conduct on Countering Illegal Hate Speech,⁴¹ developed in collaboration with some of the major information technology companies, constitutes a (non-legally binding) commitment to remove “illegal hate speech”, defined on the basis of the Framework Decision on Combatting Certain Forms and Expressions of Racism and Xenophobia by Means

of Criminal Law,⁴² within 24 hours. While the Code of Conduct is ostensibly voluntary, it is part of a concerning trend whereby States (including through intergovernmental organisations) are increasing pressure on private actors to engage in censorship of content without any independent adjudication on the legality of the content at issue.⁴³

In short, the law on intermediary liability remains legally uncertain in Europe, with tensions between the European Court's jurisprudence and the protections of the E-Commerce Directive, as well as the guidance of the international freedom of expression mandates.

Basic legal guarantees

An enabling environment for the rights to freedom of expression and equality

Legal protection of the right to freedom of expression

The **Constitution** of the Italian Republic (the Constitution)⁴⁵ guarantees the protection to the right to freedom of expression (in Article 21)⁴⁶ in its Fundamental Principles. The right to freedom of information (although not explicitly provided for) is recognised in the Constitutional Court jurisprudence.⁴⁷

The Constitution also grants immunity privilege to members of parliaments and regional councillors against civil or criminal liability for any opinions expressed in the exercise of their functions.⁴⁸

Relevant legislative provisions to protect freedom of expression and the right to equality in the media can be found in the so-called '**Gasparri Law**'⁴⁹ (named after the minister responsible for it), which includes regulations and principles governing the structure of the broadcast media in general and the Italian public service broadcaster RAI specifically, and in the subsequent Law on Radio and Audiovisual Media Services (**Consolidated Act**).⁵⁰ In particular:

- The Gasparri Law outlines the following fundamental principles applicable to radio and audiovisual media services: “the protection of freedom of expression of every individual, including freedom of opinion and to receive or impart information or ideas regardless of frontiers” and “the respect of freedoms and rights, in particular of the dignity of the person”;⁵¹
- The regulation of audiovisual media must guarantee “the airing of programmes that respect the fundamental rights of the person” and must ban programmes that “contain incitement to hatred on any grounds or that, even with regard to the time of transmission, may harm the physical, psychological or moral development of minors”;⁵²
- The same ban applies to the airing of advertisements and telesales, which must “respect the dignity of the person” and must not evoke “discrimination based on race, sex and nationality”;⁵³ and
- The Consolidated Act further extends the ban to programmes “that instigate intolerant behaviours based on differences of race, sex, religion or nationality.”⁵⁴

With specific regard to the protection of minors, private and public broadcasters, as well as audiovisual content providers, must also comply with the provisions of the Code on TV and Minors, which was originally approved in 2002 as a self-regulatory instrument and subsequently incorporated into the Gasparri Law and the Consolidated Act.⁵⁵ The provisions of the Code on TV and Minors do not make any explicit reference to the protection of minors from ‘hate speech’. However, it established a protected time slot (between 4pm and 7pm) during which no programmes or adverts can be broadcast that depict situations that may harm the physical or psychological development of minors, including “discrimination on the grounds of sex, race, etc”.⁵⁶

The Consolidated Act further prescribes that no radio and audiovisual media services subject under Italian jurisdiction may disseminate content with “any incitement to hatred based on race, sex, religion or nationality”. The same obligation applies to commercial communications (e.g., advertisements and telesales) aired by radio and audiovisual media service providers subject to the Italian jurisdiction.⁵⁷

The competent body mandated to guarantee the respect of the fundamental rights of the person in the audiovisual media sector is the Italian Communications Regulatory Authority (AGCOM).⁵⁸ Under specific circumstances, and subsequent to prior warning and consultation procedures, AGCOM can order the temporary suspension of the reception and re-transmission of radio and audiovisual programmes originating from any European Union (EU) Member States in cases of “explicit and serious violation of the ban on content” that contains “incitement to hatred based on the difference of race, sex, religion and nationality”, which is determined as two or more violations committed within the previous twelve months. The same provisions apply with regard to radio and audiovisual programmes aired from non-EU State Parties to the European Convention on Transfrontier Television of 5 May 1989.⁵⁹ AGCOM is able to take such action regardless of whether the same facts constitute a crime according to the Italian Criminal Code or other legislative provisions.

Legal protection of the right to equality

The right to equality is protected in Articles 2 and 3 of the Constitution.⁶⁰ The main anti-discrimination law is the 2003 Legislative Decree No. 125.⁶¹ Decree No. 125 provides a legal definition of ‘equal treatment’⁶² and expands the definition of ‘discrimination’ (i.e., less favourable treatment of a person based on her race or ethnic origin) to explicitly include ‘harassment’. Harassment is defined in Decree No. 125 as

[T]hose unwanted behaviours adopted on the grounds of race or ethnic origin that aim at or have the effect of causing the violation of a person’s dignity and creating a hostile, intimidating, degrading, humiliating and offensive environment.⁶³

Decree No. 125 also provided for the creation of the **National Office Against Racial Discrimination** (UNAR), a body operative as of 2004 within the Department of Equal Opportunities at the Presidency of the Council of Ministers,⁶⁴ mandated with various tasks concerning discrimination.

In terms of **protected grounds**, although Decree No. 125 only refers to ‘race and ethnic origin’, ministerial guidelines issued by the Department of Equal Opportunities have progressively extended UNAR’s mandate to deal with cases of discrimination and harassment based on religion or belief, personal opinions, age, disabilities, sexual orientation, and gender identity.⁶⁵

Finally, Decree No. 125 provides for the establishment of a register of organisations that are active in the field of promoting the right to non-discrimination and equality. Only those organisations which comply with the required criteria of transparency, accountability, and absence of conflicts of interest are allowed to join the register and are therefore entitled to bring a judicial claim, stand on behalf of, or intervene in support of an alleged victim of racial/ethnic discriminatory acts in a judicial proceeding.⁶⁶ The register is annually updated by the Department of Equal Opportunities at the Presidency of the Council of Ministers and is available for consultation on UNAR’s website.⁶⁷

Other relevant equality legislation include:

- Legislative Decree No. 216 of 2003, on guarantees of equal treatment in employment and occupation regardless of religion, personal convictions, handicaps, age, or sexual orientation;⁶⁸
- Law No. 67 and Legislative Decree No. 198 of 2006 dealing with judicial protection from discrimination for individuals with disabilities and the promotion of equal opportunities between men and women;⁶⁹ and
- Legislative Decree No. 5 of 2010, ratifying EU Directive 2006/54, which establishes the principle of equal treatment between men and women in employment and occupation.⁷⁰

Further, in 2004 the **Region of Tuscany** adopted Regional Law No. 63, against discrimination based on sexual orientation or gender identity.⁷¹ According to Law No. 63, the Tuscan regional government undertakes to adopt “policies aimed at allowing the free expression of the sexual orientation and gender identity of every person and overcoming discrimination”. In particular, the Tuscan Law mandates the Regional Communications Committee (CO.RE.COM) – a territorial branch of AGCOM – to monitor regional and local radio and audiovisual programmes in order to ensure that local broadcasters dedicate “adequate information space” to the topic of sexual orientation and gender identity and to identify content or language that may be potentially discriminatory on the grounds of sexual orientation and gender identity.⁷²

In April 2017 the Region of Umbria adopted a similar law, which provides for the creation of a regional Observatory on Discrimination based on Sexual Orientation or Gender Identity.⁷³ The tasks of the Observatory, which is made up of institutional representatives, relevant NGO representatives, and academic experts, include gathering data on cases of discrimination in the region, reporting them to the national Observatory for Security Against Acts of Discrimination (OSCAD), and collecting and developing good practices in the public and private sector.⁷⁴

Other regions have tried to introduce similar legislation, but have not yet been successful.

Prohibitions of ‘hate speech’ in criminal law

Criminal provisions directly restricting ‘hate speech’

The primary piece of criminal legislation prohibiting ‘hate speech’ is **Law No. 654 of 1975**.⁷⁵ Law No. 654 has been amended twice, first in 1993 by the so-called ‘Mancino Law’ – which introduced measures to punish racial, ethnic, and religious discrimination – and subsequently in 2006 by Law. No. 85, addressing Crimes of Opinion.⁷⁶ From the perspective of international freedom of expression standards, the main features of the legislation are as follows:

- The **protected characteristics** are unduly limited, as the legislation *only* criminalises ‘hate speech’ targeting people on the grounds of their race, ethnic origin, nationality, or religion;
- It establishes that unless the matter constitutes a more serious crime for the purposes of the application of Article 4 of the International Convention on Racial Discrimination (ICERD), whoever “propagandises ideas based on racial superiority or racial or ethnic hatred or instigates to commit or commit acts of discrimination based on racial, ethnic, national or religious grounds” may be punished by imprisonment up to one year and six months or a fine up to 6,000 EUR.⁷⁷ It is worth noting that prior to the 2006 amendment, this wording was much broader: a crime could be committed by whoever “spread in any form” ideas based on racial superiority or racial and ethnic hatred. The amendment replaced this wording with the term “propagandise”;
- It stipulates that anyone who “in any way instigates violence, or commits violence, or commits acts that may provoke violence, based on racial, ethnic, national or religious grounds” may be punished by imprisonment for a minimum of six months up to four years.⁷⁸ Similarly, the current term ‘instigates’ was introduced in the 2006 amendment to replace the term ‘incites’, and is perceived by some jurists as a more restrictive definition than ‘incitement’ in identifying the crime of ‘hate speech’;
- It forbids “any organisations, associations, movements or groups whose purposes include incitement to discrimination or violence based on racial, ethnic, national or religious grounds”. ‘Participants’ of such groups may be punished solely on the grounds of their participation in or mere assistance to them, with minimum prison terms of six months and up to four years; those who promote or preside over such organisations, associations, movements or groups may be punished with minimum terms of one year, and up to six years;⁷⁹

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- It establishes that “for all crimes not punishable with life imprisonment that are committed with the purposes of discrimination or racial, ethnic, national or religious hatred, or [committed] in order to facilitate the activities of organisations, movements or groups with the same purposes, the relevant penalty is increased by half”.⁸⁰ As a result, racial, ethnic, national, or religious bias motivation is considered an aggravating circumstance for the commission of such crimes;
 - A broad range of accessory punishments are also set out in the legislation, including community service, travel restrictions, and house arrest;⁸¹ and
 - Although none of these provisions specifically refer to the dissemination of ‘hate speech’ through the mass media or the Internet, they are considered applicable to these cases, either alone or more often as aggravating circumstances in criminal defamation cases.

Further, provisions in other legislation are also of relevance to the criminalisation of ‘hate speech’ in the country.

The 1967 Law for the Prevention and Repression of Genocide includes a provision for the punishment of “whoever publicly instigates to commit the crimes of genocide described in the law” or “whoever publicly defends (*apologia*) the crimes of genocide as described in the law”, with imprisonment of a minimum of three years, and up to 12 years.⁸²

A new special law in force as of 2016 has added that “if the propaganda or the instigation and incitement is committed in a way that may cause a concrete danger of diffusion, are based all or in part on the denial of the Shoah or of the crimes of genocide, the crimes against humanity and war crimes as defined by Articles 6, 7 and 8 of the Statute of the International Criminal Court”, the available punishment is imprisonment of a minimum of two years, and up to six years.⁸³

Lastly, in 2008 the Italian Parliament ratified the 2001 Council of Europe Convention on Cybercrime, which deals with crimes committed via the Internet and other computer networks.⁸⁴ However, the Additional Protocol to the Convention on Cybercrime, adopted in 2003, which extends the scope of the Convention to cover offences of racist or xenophobic propaganda, has not yet been ratified by the Italian government despite being signed in 2011. Its provisions are therefore not yet in force in Italy.

Interpretation of criminal provisions directly restricting 'hate speech'

The scope and several aspects of the existing legislation have been clarified in Supreme Court of Cassation jurisprudence; in particular:

- **The scope of the legislation** was clarified in a 2005 case concerning a man sentenced by the lower courts to a 3,000 EUR sanction for disseminating leaflets ahead of the June 2013 European Parliamentary elections.⁸⁵ The leaflets included the slogan “Enough with loan sharks – enough with foreigners”, an oblique but commonly understood reference to Jewish people, and graphic images depicting, variously, the country surrounded by black people selling drugs, Abraham Lincoln hoarding dollars, Chinese hawkers of poor quality products, a Roma child and his mother in ragged clothes begging, and a Muslim man wearing an explosive belt. In the case, the Supreme Court used the term ‘hate speech’ for the first time, but narrowly defined it as “speech that exalts hatred, mostly pronounced by politicians, typically towards minority groups or socially weak people”. In this case, the Supreme Court considered the following as relevant for the conviction:
 - In relation to the concept of **propaganda**, the Supreme Court stated that the applicable norm required a more specific message rather than a simple dissemination of [a discriminatory statement]. In particular, the dissemination of the message must be directly aimed at influencing the behaviour or psychological reaction of a vast public audience in order to attract followers and create the ‘concrete danger’, immediately or in the short term, of discrimination towards the targeted group. When it comes to propaganda, the author/ disseminator of the message must be aware of its controversial content and its potential effects and be willing to pursue them (*dolus generalis*);
 - The Supreme Court specified that the rationale of the norm is primarily the **protection of the dignity of the person**, both individually and as part of an ethnic group, but also the protection of public order;
 - The Supreme Court found that although it was irrelevant how the discriminatory message was being spread, it was necessary that the **message reached its intended target**, even if the target did not perceive the offence to her/his dignity;
 - The Supreme Court found that the ‘offensiveness’ of the message must unequivocally reveal the sentiment of superiority or hatred of the author towards the race or ethnicity of the target;
 - On the other hand, the Supreme Court rejected the argument made by some that the term ‘instigates to commit’ – which replaces a previous formulation of ‘incites’ – narrows the application of the norm, considering the two verbs as substantially equivalent. However, in the specific case, the Court decided to annul the conviction, because, as it further explained, the defendant’s conduct must be assessed taking into account the ‘context’ in which it took place, in

order to ensure the correct balancing between the protection of the dignity of the individual and freedom of expression. According to the Supreme Court, the “peculiar climate in which electoral competitions take place” heats up the tone of the general public debate, rendering it more coarse and incisive; this therefore raises the threshold of what constitutes permissible expression, including that which would otherwise be unacceptable in an inter-personal exchange; and

- Finally, the Supreme Court affirmed that the **notion of ‘hatred’** punishable by law does not automatically include “any feeling or manifestation of generic hostility, impatience or rejection, even when they are based on the grounds of race, ethnicity, or religion”, as long as it does not create a concrete danger of instigating discriminatory actions.
- The Supreme Court of Cassation further developed guidance in ‘hate speech’ cases when, in 2009, it considered a case concerning the conviction of a former regional councillor of the Region of Veneto for the crime of propaganda of ideas based on racial and ethnic origin.⁸⁶ In 2001, the councillor, supported by the Northern League Party, organised a petition called “Sign to send gypsies away from our city” in order to evict a Roma camp in the city of Verona. He was subsequently sued by a number of Sinti citizens and by the organisation Opera Nomadi. In this case, the Supreme Court considered the following aspects:
 - For the proof of **intent**, the Supreme Court acknowledged that the purpose of the campaign was to “propagandise ideas based on racial superiority or racial or ethnic hatred”, as evidenced by the content of the slogans in the manifestos accompanying the petition, which called for the eviction of gypsies “from our homes”, without any reference to the presumed necessity to restore public order and legality by promoting such action;
 - The **dissemination** of the manifestos in other cities not directly interested in the petition was also considered by the Supreme Court as further evidence of its actual purpose of promoting racial hatred and intolerance; and
 - On the other hand, the Supreme Court agreed that the defendants should be acquitted of the further charge of “incitement to commit acts of discrimination on the grounds of racial and ethnic origin”. It concluded that the only direct exhortation to commit a concrete act was the invitation to sign the petition to evict the Roma camp from the city, which in itself was not an illegitimate request. Therefore it did not meet the threshold of ‘incitement’ (or would not even meet the threshold of ‘instigation’ later introduced to these provisions).
- With regard to cases of **online ‘hate speech’**, the 2015 decision of the Supreme Court⁸⁷ in a case concerning incitement to violence is of particular note. In this case, a district councillor of the Northern League Party in the city of Padua was convicted for “instigation to commit or commits violence or acts that

provoke violence based on racial, ethnic, national or religious grounds” against the former Minister for Integration, Cecile Kyenge, a black Italian citizen of Congolese background. In June 2013, the defendant posted on her Facebook page the news of an alleged rape committed by a black man, followed by a picture of Ms Kyenge and the comment, “Is anyone ever going to rape her, so that she understands how a victim of such heinous crime may feel? Shame!” Following protests by several users, the post was removed, and the author later argued posting it had been “an impulsive act”. In this case, the Supreme Court addressed the following aspects:⁸⁸

- The Supreme Court concluded that since Ms Kyenge took no position on the rape case, the only reason for linking her to the case with a derogatory comment was racial prejudice;
- The Court also highlighted that “the means used” to commit the instigation, i.e., a social media page, “ensured a capillary diffusion” and a “heated debate” which “make the instigation even more dangerous” and that this is further evidenced by the replies of several users to the original post, who clearly understood and supported the connection between the rapist, all black people, and Ms Kyenge; and
- Finally, the Court affirmed that the phrase used by the defendant could not be considered a manifestation of her right to freedom of expression as guaranteed by Article 21 of the Constitution, because the latter is not absolute but rather must be balanced with other constitutionally protected rights such as the right to equality (Article 3 of the Constitution).

Criminal provisions indirectly restricting ‘hate speech’

The Italian courts have creatively applied a number of criminal law provisions not specifically or originally intended to be used in cases of ‘hate speech’. In particular, these provisions include:

- The crime of **criminal conspiracy**:⁸⁹ In 2013, the Supreme Court applied these provisions for the first time to a ‘hate speech’ case carried out by organised groups on the Internet, via blogs, social networks or any other virtual communities.⁹⁰ In the specific case, the defendant had participated in the promotion and coordination of an online group “characterised by a vocation of neo-Nazi ultra-right ideology” and whose aims included inciting discrimination and violence based on racial, ethnic, and religious grounds. The Court established that the “virtual Internet community” is “structurally apt” to host organised criminal groups under the Criminal Code, so ‘hate speech’ crimes perpetrated by groups within virtual communities, blogs, and/or social networks can be punished under this provision as well.

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- Criminal **defamation**: The crime of defamation applies to “anyone [who...] by communicating with more people, offends the reputation of someone else”.⁹¹ However, the Italian jurisprudence on defamation typically refers to Article 51 of the Criminal Code, which excludes the criminal liability when exercising a constitutional right. In particular, the Court of Cassation underlined that especially the case when the press freedom is concerned, so long as the journalist respected the requisites of truthfulness, public interest and necessity and proportionality.⁹² It should be noted that Italian criminal defamation provisions have been repeatedly criticised by international⁹³ and European human rights bodies.⁹⁴

The courts often consider the racial or ethnic bias as an aggravating circumstance in cases of defamation perpetrated online. The use of the Internet to commit defamation is in itself considered an aggravated circumstance, as established for the first time by the Supreme Court in 2015 in a case concerning a defamatory Facebook comment. The Supreme Court in its sentencing acknowledged that the term “any other means of publicity” includes new media”.⁹⁵

In 2015, for example, the Court of Appeal of Trento imposed a 2,500 EUR sanction on a district councillor for having posted on his Facebook page an offensive comment regarding the aforementioned Minister of Integration, Cecile Kyenge, who is of Congolese background. His comment ended with an invitation to Ms Kyenge to “go back to the jungle she came from” followed by a series of pictures of monkeys. The Court of Appeal acknowledged that the message was “gravely detrimental to the honour and reputation [of Ms Kyenge]”; it found that it was “not at all justifiable” and was based on racial discrimination as it suggested that Ms Kyenge was an inferior person due to the colour of her skin.⁹⁶

Another example of aggravated defamation perpetrated online can be found in the *Vivi Down v Google* case,⁹⁷ concerning the responsibility of an Internet host for ‘hate speech’ posted by their users. On 8 September 2006, a group of minors uploaded a video onto YouTube in which they were depicted beating, insulting, and humiliating a child with Down’s syndrome, and falsely claimed to be members of *Vivi Down*, a not-for-profit association dedicated to the care of children with Down’s Syndrome. Following protests and reports by YouTube users, the video was removed by Google two months later, subsequent to a warning received from the Postal Police. *Vivi Down* sued Google’s managers for complicity in defamation, aggravated by the use of the Internet. They alleged that Google failed to check and promptly remove the video after being alerted by several users, alleging that Google acted only when the Postal Police issued a formal warning. Eventually, Google was acquitted and the decision was upheld by the Supreme Court. The Supreme Court found that “the position of Google is that of a mere host provider, i.e. a subject that only provides a

platform on which users can freely upload their videos and for whose content the latter are exclusively responsible”.⁹⁸ It also highlighted that Google had removed the video as soon as it received official communications from the competent authorities and therefore could not be accused of complicity in the defamatory act of the video’s authors.

However, in a more recent 2016 case the Supreme Court ruled that a website that hosted a defamatory comment posted by a third party in the ‘Community’ page was responsible for complicity in defamation because, despite having been promptly alerted via email about the post on its page, it had failed to remove it until a judge had ordered the preventative sequester of the website.⁹⁹

- **Crime of threats:**¹⁰⁰ In a 2011 case, the Supreme Court found that discrimination based on racial or ethnic hatred was an aggravating element. The victim (a history schoolteacher) had received sustained anti-Semitic threats via telephone as a result of her research on the Holocaust, though she was not herself Jewish. The Supreme Court affirmed that the aggravating element can exist even when the person threatened is not themselves a member of the protected group, but is indirectly associated with it, for example because of their studies or profession.¹⁰¹
- The crime of **the apology of fascism**, based on Law No. 645 of 1952.¹⁰² In 2016, for example, the Supreme Court upheld the conviction of seven individuals who had been fined for performing the ‘Roman salute’ during a televised football match between Italy and Georgia in 2008.¹⁰³ In this decision, the Supreme Court affirmed that such a gesture “recalls the fascist ideology and political values of intolerance and racial discrimination”. It also specified that such gestures do not need to be accompanied by violence to fall under the legal prohibition and highlighted that the resonance of such gestures was amplified by the fact that they were performed during a televised event.
- The crime of **offending the honour or the prestige of the President**¹⁰⁴ and **offending state institutions**, namely the Italian Republic, one or both of the parliamentary chambers, the Italian government, the Constitutional Court, the Judiciary or even “the Army”.¹⁰⁵
- The crime of the **public instigation to disobedience of public order or hatred amongst social classes.**¹⁰⁶ The Constitutional Court specified that the act of instigation to hatred amongst social classes must be committed “in a way that is dangerous for the public order”.¹⁰⁷
- The crime of the **publication or dissemination of fake, exaggerated or biased news aimed at disturbing the public order.**¹⁰⁸
- Further, provisions contained in Italian legislation that could also be applied to ‘hate speech’ cases, and which fail to comply with international freedom of expression standards, include the crime of **denial of the Shoah or of genocide**

crimes, war crimes, and crimes against humanity,¹⁰⁹ which broadly prohibits “the propaganda or the instigation or the incitement, committed in a way that provokes concrete danger of dissemination, are based entirely or partly on the denial of the Shoah or of the crimes of genocide, the war crimes and the crimes against humanity as defined by Articles 6, 7 and 8 of the statute of the International Criminal Court”.¹¹⁰

Efforts to amend existing legislation on ‘hate speech’

Efforts to amend the existing legislation on ‘hate speech’ include the following initiatives:

- Expanding the **protected characteristics**: As previously noted, only ‘hate speech’ targeting people on the basis of their race, ethnic origin, nationality, or religion is currently criminalised. In 2013, Italian legislators attempted to fill this normative gap. The Chamber of Deputies (the lower house of parliament) approved Law No. 1052¹¹¹ introducing criminal provisions regarding the propaganda of “ideas founded on homophobia or transphobia” and the instigation to commit or commission of “acts of discrimination based on homophobic or transphobic grounds”. Law No. 1052 would also introduce an exception for “the free expression of personal opinions representing the pluralism of ideas [...] adopted within organisations that carry out political, trade unionist, cultural, sanitary, educational or religious activities in compliance with the constitutionally protected values and principles that characterise them”. This has prompted harsh criticism from LGBTQI¹¹² movements, as well as the UN Special Rapporteur on Freedom of Expression, who argued that the bill “should not include any exceptions for institutions or particular groups which might generate loopholes in its application”.¹¹³ Law No. 1052 is currently pending examination by the Senate (the upper house of parliament).
- The 2017 proposal of Law No. 2688 on the **prevention of ‘fake news’**:¹¹⁴ This legislative proposal has already stirred up controversy, as it contains a number of provisions that fail to meet international freedom of expression standards. In particular:
 - It introduces an overbroad prohibition of the “publication or dissemination of false, exaggerated or tendentious news, aimed at unsettling the public order, through IT platforms”,¹¹⁵ spreading or communicating “rumours or false, exaggerated or tendentious news that may cause public alarm, or carries out in any way an activity that damages the public interest or misleads the public opinion even through Internet-based campaigns aimed at online dissemination”;¹¹⁶ and the dissemination “via the Internet, of hate campaigns against individuals or campaigns aimed at undermining the democratic process, even for political purposes”;¹¹⁷ and

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- It would impose a disproportionate burden of prior censorship on Internet publications. Whilst publications registered under the Press and Publishing Law¹¹⁷ would be exempt, Law No. 2688 would be applicable to all other online publications, i.e. blogs, websites, forums, social networks etc. that are not registered as publishers. Furthermore, Law No. 2688 would impose an obligation on blog and website managers to officially inform, via certified e-mail, the territorially competent court of the beginning of their activities, their URL, and other personal details. Blog and website managers are also legally bound to publish any request of rectification within 48 hours of receipt and “to conduct constant monitoring of the contents disseminated on their pages, with particular regard to content in which users show sudden popular attention, in order to ascertain their reliability and truthfulness”.
 - Proposed amendments to **defamation provisions** contained in the Criminal Code and the Press Law, currently pending before the Senate for final approval:¹¹⁹ If approved, whilst in a positive step the amendments would abolish custodial sentences, they would simultaneously increase the fines available for defamatory statements published in the media, including on the Internet. Journalists who repeatedly commit such offences could also, under the proposed amendments, face temporary bans from exercising the profession. For these reasons, the amendments raise concerns for its persistent incompatibility with the international standards on freedom of expression.

Measures against ‘hate speech’ in administrative law

There are currently no provisions directly restricting ‘hate speech’ in Italian administrative law.

However, in June 2017, through Law No. 71, Italian legislators expanded the application of ‘hate speech’ prohibitions to cases of **cyberbullying** (instigation of hatred online towards single individuals on various protected grounds).¹²⁰

- Law No. 71 defines cyberbullying as “any form of pressure, aggression, harassment, blackmail, insult, denigration, defamation, identity theft, alteration, illicit acquisition, manipulation, illegal processing of personal data (...) harming minors carried out online, and the dissemination of online content regarding one or more family members of the minor, with the predominant intention of isolating a minor or a group of minors and seriously damaging them, abusing them or ridiculing them”;¹²¹
- Law No. 71 permits minors aged over 14 who are targeted by ‘cyberbullying’, and their parent/guardian, to contact the web host or social media provider directly to request the blacking out, removal, or blocking of any of her/his personal data disseminated online. If within 24 hours the host or provider does not confirm receipt of the request, and remove the content as requested within 48 hours, or in any case where it is impossible to identify the manager of the Internet or social media site, the minor, together with their parent/guardian, can address her/his request to the Data Protection Authority and the latter must proceed to fulfil the request to black out, remove, or block the online content within 48 hours;
- Law No. 71 also establishes that if the ‘cyberbully’ is a minor over 14, before the victim presses charges for the crime of insult or aggravated defamation or threats or breach of personal data protection, it is possible to request that the Police Superintendent issue a prior ‘warning’, which remains in force until the ‘cyberbully’ turns 18 years old. Where offences are committed subsequent to ‘cyberbullies’ receiving a warning, aggravating circumstance will be taken into consideration in the application of a penalty, if the defendant is found guilty,¹²² and
- Finally, Law No. 71 establishes the creation of a Technical Roundtable for the prevention and tackling of cyberbullying – formed by representatives of several ministerial cabinets, regional authorities, AGCOM, the Ombudsperson for Childhood and Adolescence, the Committee for the Implementation of the Co-regulatory Code on the Media and Minors, the Data Protection Authority,

associations specialised in the protection of minors, social networks and Internet providers, and parents and students' associations – which will carry out several tasks in this area.¹²³

Prior to the approval of a national cyberbullying law, the Regions of Lazio and Lombardy had adopted regional laws to prevent and tackle cyberbullying.¹²⁴

Administrative pecuniary sanctions to be applied for the **defamation of religion/blasphemy** are also provided for in the Italian Criminal Code; under the relevant provisions, “whoever publicly blasphemes, with curses or other abuse, the divinity or the symbols or persons worshipped in the religion” and “who commits any offensive acts against the dead”.¹²⁵ Originally, the provisions imposed pecuniary criminal sanction, but in 1999 they were replaced with administrative sanctions.

Civil actions against ‘hate speech’

Civil causes of action against ‘hate speech’

The Italian legislative system permits the alleged victims of a crime to initiate **civil proceedings within the criminal trial** (*costituirsì parte civile*) to claim compensation for moral and pecuniary damages caused by the commission of the crime.¹²⁶

Victims can also pursue a separate civil **defamation lawsuit** in cases of ‘hate speech’. However, in practice this option is rarely chosen, as bringing civil action within the criminal trial is generally considered to speed up compensation, requiring the conclusion of only one decision.

Alongside the direct victims of ‘hate speech’, Italian legislation gives standing to organisations and/or associations specialised in the promotion of the right to equality and enrolled in the Register of the National Office Against Racial Discrimination (UNAR) to initiate civil cases – either within the criminal trial or independently of it. Only these organisations are entitled to bring causes of action on behalf of, or to intervene in support of, the alleged victims of racial, ethnic, national, or religious discriminatory acts (including ‘hate speech’) in a judicial proceeding.

These organisations are also entitled to bring claims in cases of **collective discrimination** against a group, in the case of the absence of individuals specifically targeted or immediately identified in the offending expression.¹²⁷

In civil cases, the plaintiff is required to provide unequivocal evidence to prove that the statement made by the defendant fulfils the criteria of discriminatory acts¹²⁸ – whereas the defendant must provide evidence to prove that their statement was not discriminatory.

The following cases can be highlighted as examples of civil proceedings brought within a criminal trial for ‘hate speech’, both by a representative association of a protected group and by individuals not directly targeted in the offending expression but identifiable members of the targeted, protected group:

- The aforementioned case of the regional councillor of Veneto who organised a petition “to send gypsies away from our city”, intended to evict a Roma camp from the city of Verona. Aside from the criminal sanctions imposed, the civil parties in the judicial proceedings (seven members of the Sinti community and Opera Nomadi, an association for the integration of Roma minorities in Italy) were awarded 50,000 EUR for moral damages;¹²⁹

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- The aforementioned case of the Trento district councillor who posted on his Facebook page a comment about the Italian-Congolese Minister of Integration, Cecile Kyenge.¹³⁰ The civil parties who intervened in the trial were the regional branches of ARCI (the Italian Cultural and Recreational Association) and ANPI (the National Association of Italian Partisans), the National Association of Democratic Jurists, ASGI (the Association for the Legal Status of Immigration), and ATAS (the Trentino Association for Foreigners' Reception). Each organisation was awarded 2,000 EUR in moral damages. The criteria used to determine the extent of the damages awarded took into account "the gravity of the conduct" and the "breach of a primarily relevant constitutional right".

Role of equality institutions in relation to public discourse and ‘hate speech’

As highlighted earlier, two equality institutions play an important role in countering ‘hate speech’ in Italy: **the National Office Against Racial Discrimination (UNAR)** and **the Observatory for Security Against Acts of Discrimination (OSCAD)**.

UNAR’s tasks include:

- Providing assistance to the alleged victims of discrimination within their jurisdictional or administrative proceedings and, upon victims’ request, intervening in the relevant judicial proceedings to give oral or written information and/or observations;
- Receiving complaints and testimonies of instances of discrimination and conducting its own independent inquiries into those reported cases, all in respect of the competences of the judiciary;
- Promoting and coordinating studies, research, training, communications campaigns as well as disseminating information on the protection tools available; and
- Reporting annually to parliament and the presidency of the Council of Ministers on the actual implementation of the principle of equal treatment and the effectiveness of the protective tools available.¹³¹ UNAR receives reports and complaints of discrimination, including ‘hate speech’, through a Contact Centre accessible either by calling a toll free number or by submitting a form available on its website. It also has a dedicated Facebook page which informs the public of its latest initiatives and re-directs them to its website for the submission of reports and complaints to its Contact Centre.¹³²

UNAR’s Contact Centre staff include, amongst others, two new media and social media research experts , who are also responsible for the National Observatory Against Discrimination in the Media and on the Internet (Media and Internet Observatory). The Media and Internet Observatory was set up in 2016 to collect and analyse new and emerging forms of discrimination in online media and on social networks. Its monitoring activity relies both on complaints received through UNAR’s Contact Centre and on the use of automated semantic/linguistic software to detect and carry out a sentiment analysis, in real time, of discriminatory expression on the grounds of race, ethnic origin, religion, disabilities, different political opinions, age, sexual orientation, and gender identity.¹³³

Another source of information and monitoring of ‘hate speech’ used by UNAR comes from NGOs working in the non-discrimination field, and who are enrolled in the official register of such associations, which was set up and is managed by UNAR within the Department of Equal Opportunities.

It is worth noting that UNAR is not able to bring cases of action, nor is it empowered to issue administrative sanctions, but it can promote informal reconciliation procedures between the parties through its network of associations or with the cooperation of regional/city administrative authorities across the territory, prior to parties resorting to judicial proceedings.¹³⁴

OSCAD, established in 2010 by a Decree of the Chief of the Police Department within the Ministry of the Interior,¹³⁵ also plays a monitoring role. It is able to receive reports and complaints from individuals, institutions, or associations regarding cases of discrimination on the grounds of race, ethnic origin, religion, disabilities, different political opinions, age, sexual orientation, or gender identity via a dedicated telephone line (to which calling charges apply) or email.

According to a Memorandum of Understanding signed between the Department of Equal Opportunities and the Ministry of the Interior, which is responsible for OSCAD, UNAR must report to OSCAD all ‘hate crimes’ and racist acts of criminal relevance, including alleged ‘hate speech’ incidents reported to them. At the same time, the police are duty bound to report all discrimination cases that do not constitute crimes to UNAR for information and monitoring purposes. UNAR and OSCAD have also committed to organising regular training activities for the police and cooperating in public awareness-raising campaigns.¹³⁶ OSCAD further signed a Memorandum of Understanding with the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE) to take part in its Training Against Hate Crimes for Law Enforcement project.¹³⁷

The specific ‘hate speech’ incidents reported to OSCAD by UNAR are forwarded by OSCAD to the Postal Police section, which investigates all crimes committed online, although it does not have a specific unit dedicated to ‘hate speech’. The Postal Police can also receive complaints or reports directly from the public, either in person, via e-mail, or through a special form available on their online platform and on their dedicated Facebook page.¹³⁸

Media regulation and ‘hate speech’

Government frameworks on media policy

Comprehensive policies relating to external pluralism – i.e. the plurality of media service suppliers – in Italy are outlined in the Gasparri Law and in the Consolidated Act, mentioned above.

These laws, *inter alia*:

- Establish the criteria to guarantee effective competition in the radio and audiovisual and in the advertising market; and prohibit the creation or maintenance of market positions considered in breach of pluralism, including those which are created via controlled or connected companies.¹³⁹ The Gasparri Law additionally includes provisions governing the structure of the broadcast media landscape in general and of the public service broadcaster RAI;
- Grant AGCOM the power to identify the relevant markets for regulation in accordance with the principles of Articles 15-16 of EC Directive 2012/21, verify the existence of dominant market positions, and take the necessary measures to eliminate or prevent the formation of such positions;¹⁴⁰ and
- Introduce the definition of an Integrated Communications System (SIC) – defined as a comprehensive media market including television, publishing, radio, Internet, direct advertising, sponsorships, revenues from the public service broadcaster’s annual licence fee, sales of cinema tickets, rental or sales of DVDs, and direct grants to print publishers; and set a cap on the percentage of total revenue that a single market operator can generate in such an integrated market to avoid dominant positions.¹⁴¹

In terms of policies addressing internal pluralism – i.e. pluralism of media content – particularly for the promotion of diversity and inclusion of minorities, Italian legislation has focused on measures aimed at protecting **linguistic minorities**.¹⁴² A series of norms protecting linguistic minorities include obligations for the regional branches of the public service broadcaster RAI to air programmes and news dedicated to the recognised historical linguistic minorities residing in the respective regions.¹⁴³

However, to date no legislation has acknowledged the **Roma, Sinti, and Caminanti** as linguistic minorities, and therefore they have not been granted the same rights as the other linguistic minorities historically present in the country. Several bills have been tabled in the last five years to try and fill this legislative gap, but none have reached the plenary for discussion. The only action taken by the government thus far to consider the needs of the Roma and Sinti minorities is the ‘National Strategy for the Inclusion of Roma, Sinti and Caminanti – 2012–2020’,¹⁴⁴ which

was produced in response to the recommendations made in the Communication of the European Commission No. 173/2011.¹⁴⁵ The strategy provides for the creation of multi-sectoral regional task forces, coordinated by UNAR and the Department for Equal Opportunities, whose objectives include training the local media to provide unbiased and non-stereotyped information about these minority communities in order to avoid their stigmatisation. However, the strategy does not detail any concrete measures to ensure these objectives are implemented; nor does it include any measures to improve these minority communities' access to media services.

Responding to the high, and increasing, incidence of violence against women in the country, a law approved in 2013 saw the adoption of a **National Action Plan against Gender and Sexual Violence**, coordinated by the government's Department of Equal Opportunities.¹⁴⁶ This action plan envisaged the adoption of co-regulatory codes of conduct for the media, which aim to tackle prevalent gender-stereotyping in the media.

With regards to communications on the Internet, in July 2014 the Chamber of Deputies of the Italian Parliament established a special **Committee to study the rights and duties of the Internet**, which conducted hearings and public consultations before publishing a 'Declaration of the rights on the Internet' in 2015.¹⁴⁷ Though not legally binding, it is intended as a framework policy document with which all legislators, institutions, Internet operators, and Internet users alike should comply. The Declaration establishes, *inter alia*, that "no limitations of freedom of expression are accepted" on the Internet but that "the people's dignity must be protected from abuse related to behaviours such as incitement to hatred, discrimination and violence".¹⁴⁸

Broadcast media

Content regulation within broadcast regulatory framework

Under the Gasparri Law, audiovisual media services must guarantee "the airing of programmes that respect the fundamental rights of the person" and are prohibited from transmitting "programmes [...] that contain incitement to hatred on any grounds or that, even with regard to the time of transmission, may harm the physical, psychological or moral development of minors".¹⁴⁹ The Consolidated Act further extends the ban to programmes "that instigate intolerant behaviours based on differences of race, sex, religion or nationality"; and prescribes that radio and audiovisual media services subject to Italian jurisdiction must not broadcast content that contains "any incitement to hatred based on race, sex, religion or nationality".¹⁵⁰ The same obligation applies to commercial communications such as advertisements and telesales aired by radio and audiovisual media service providers subject to the Italian jurisdiction.¹⁵¹

The body mandated to guarantee the respect of individuals' fundamental rights in the communications sector is **AGCOM**.¹⁵² Under specific circumstances and following the issuance of prior warnings and consultation procedures, AGCOM can order the temporary suspension of the broadcast and re-transmission of radio and audiovisual programmes originating from any EU Member State, in case of “explicit and serious violation of the ban” to contain “incitement to hatred based on the difference of race, sex, religion and nationality” more than once within the previous twelve months. The same provisions also apply with regard to radio and audiovisual programmes aired by non-EU Member States, where those states are parties to the European Convention on Transfrontier Television.¹⁵³

However, AGCOM does not have the same legal powers to intervene and sanction such violations when they concern offending programmes broadcast by radio or TV broadcasters based in Italian territory, even though the provisions prohibiting content apply to them as well. The Gasparri Law and the Consolidated Act grant AGCOM the power to issue warnings and pecuniary sanctions only when violations of the relevant provisions concern the content of programmes aired during the protected time band (between 4pm and 7pm) during which minors are required to have additional protections.¹⁵⁴

In order to try and fill this normative gap, in September 2016, AGCOM approved a regulation containing ‘Guidelines on the Respect of Human Dignity and the Principle of Non-Discrimination in the Programmes related to News, Information Analysis and Entertainment’.¹⁵⁵ The production of these guidelines came after protests and complaints submitted to AGCOM regarding two talk shows which aired on a private national TV channel owned by Mediaset, and which had been accused of inciting hatred and discrimination. The guidelines establish that:

- The providers of radio and audiovisual media must ensure “the most rigorous respect, in their information and entertainment programmes, of the fundamental principles for the protection of viewers, with specific regards to those subjects at risk of discrimination”;
- When reporting the news, programmes must limit any superfluous and irrelevant references to “race, religion or sexual orientation” and must avoid “expressions based on hatred, discrimination, that incite to physical or verbal violence or that offend the human dignity and the sensitivity of the viewers, thus contributing to the creation of a biased cultural environment”;
- Programmes must provide a “truthful and objective representation of migratory movements” and must aim to raise public awareness of ‘hate speech’ in their news programmes; and
- Radio and audiovisual media service providers should adopt and implement suitable measures to prevent or correct violations of the above-mentioned principles, in particular during live broadcasts.

As highlighted by the AGCOM Board Commissioner responsible for drafting the guidelines, they are intended as an instrument of “moral persuasion”, promoting a constructive rather than a punitive sanctions based approach to the broadcast media.¹⁵⁶ If these guidelines are breached in a broadcast during the protected time band (between 4pm and 7pm) or harm minors’ physical development in any way, AGCOM would be empowered to initiate proceedings against the responsible broadcaster and issue warnings and pecuniary sanctions.

With regards to ‘hate speech’ on the Internet, AGCOM does not have any legal powers to regulate or impose sanctions for offending content hosted by online intermediaries or platforms, since such content is not included in the definition of ‘audiovisual media services’ of the EU Directive on Audiovisual Media Services (AVMSD). However, in 2014 AGCOM set up a ‘Permanent Observatory of Guarantees and Protection of Minors and of the Fundamental Rights of the Person on the Internet’.¹⁵⁷ The themes specifically monitored by the Observatory are “incitement to hatred, threats, harassment, bullying, hate speech and the dissemination of deplorable contents”. The Observatory’s objectives are:

- Monitoring, collecting and publishing data regarding the way users behave on the Internet and on social networks;
- Analysing the policies adopted by Internet hosts to safeguard the dignity of the person and the rights of the users; and
- Drafting guidelines for the adoption of self-regulatory codes of conduct by Internet companies and social media platforms.

Of particular note is a service set up by AGCOM’s CO.RE.COM in the Region of Lombardy, called ‘Help Web Reputation Youths’. It is available exclusively to residents in the region, and receives notifications and requests to remove news, images, videos, or comments published on online newspapers, blogs, social media, etc. considered offensive to individuals’ dignity. CO.RE.COM cannot directly remove or block the content subject to a notification or request, but it carries out a preliminary assessment of all requests received, and forwards the relevant ones to the competent judicial authority. The committee further informs the relevant Internet host or social media provider about their initiatives.¹⁵⁸ AGCOM is planning to extend this best practice to all the other Italian regions in the near future.

Following the entry into force of the law on cyberbullying (see above) and subsequent establishment of the Inter-Institutional Technical Roundtable on the same, AGCOM is hopeful that the roundtable will propose legislative amendments to empower AGCOM to take part in drafting co-regulatory codes of conduct on the fundamental rights of Internet users, which would be binding on all social media platforms and Internet providers, to supervise their implementation and impose sanctions in case of their violation.

Print media

Print media publications and the journalism profession in Italy are governed by law.¹⁵⁹ The relevant legislative provisions distinguish between:

- Professional journalists – defined as those who “exclusively and consistently” exercise journalistic activities; and
- Publicists – those who are paid to exercise their journalistic activities in a non-occasional way, though they have other jobs.

Both professional journalists and publicists must be registered as members of the Association of Journalists and comply with specific requirements established by law.¹⁶⁰ Membership of the Association of Journalists is not open to social media platforms or bloggers that do not comply with the relevant legal requirements. Anyone who claims to be a professional journalist or exercises the profession without registering as a member of the Association of Journalists can be punished with an administrative pecuniary fine or a custodial sentence of up to six months.¹⁶¹ A separate register is maintained for foreign journalists and directors responsible for scientific, technical, or professional journals or magazines.

The law also established the creation of a National Press Council¹⁶² and Regional or Inter-regional Press Councils¹⁶³ to monitor and regulate the journalistic profession. By law, the National Press Council must have amongst its members at least one professional journalist and one publicist who represent the legally recognised linguistic minorities. The Regional or Inter-regional Press Councils also oversee the implementation of the press law as well as the enforcement of self-regulatory codes of conduct amongst their members. They may also undertake disciplinary action against them, when they breach the codes of conduct.

The updated 2016 Journalists’ Ethical Code of Conduct (the 2016 Code), approved by the National Press Council, includes among journalists’ fundamental duties respect for the fundamental rights of the person and compliance with laws that uphold those rights.¹⁶⁴ In particular, the code of conduct highlights the duty to respect “the rights and dignity of ill people or with mental, physical, intellectual or sensorial disabilities”.¹⁶⁵

The 2016 Code incorporates the **Charter of Rome**, which is a specific code of conduct for journalists who write on migration and refugee-related themes. The Charter requires that when writing about people of other nationalities, journalists should adopt legally accurate terminology as laid out in an annexed glossary, in order to avoid spreading incorrect or misleading information about migrants, asylum seekers, refugees or victims of human trafficking.¹⁶⁶

Other provisions of the 2016 Code include the duty to promptly rectify, and with due relevance, even in the absence of a specific request, information published that is subsequently found to be false; and the duty to avoid publishing accusations about an individual that may damage their reputation and dignity, without offering them the right of reply (and, where including the affected individual's reply is not possible, to make this clear).¹⁶⁷ In addition, journalists are explicitly required to respect the right of every person not to be discriminated against on the grounds of race, religion, political opinions, sex, personal, physical, or mental disability.¹⁶⁸ Failure to comply with these duties is punishable by administrative pecuniary sanctions, as established by law.¹⁶⁹

The disciplinary sanctions available to the competent Press Councils to ensure compliance with the 2016 Code range from simple warnings to formal reprimands and, in cases in which a journalist is deemed to have seriously compromised the dignity of the profession, to their temporary suspension from the profession for no less than two months and up to one year or permanent expulsion from the professional register. Expulsion from the professional register is automatically applied whenever a journalist is convicted of a crime – and in sentencing is subject to a permanent ban on holding public office.

In practice, however, these measures have very rarely been applied by the competent Regional or Inter-regional Councils, prompting widespread criticism and discontent regarding their alleged deterrent effect. For example, in March 2017 a journalist and former newspaper editor was charged and later tried for instigating racial hatred with an inflammatory front page headline, published on 14 November 2015 (the day after a terrorist attack in Paris), attacking Muslims. The headline sent shockwaves through the public and was severely criticised by the journalistic community, and even by representatives of conservative parties that would usually support that newspaper's positions. Nevertheless, despite having been referred to the Regional Press Council for review, no disciplinary proceedings were taken against the journalist. The same journalist, in November 2016, went on to publish an unverified report of a robbery allegedly committed by members of the local Roma community, accompanied by inflammatory remarks against Roma minorities. The news report was later found to be false. After receiving complaints from two human rights organisations, the competent Regional Press Council only belatedly issued a reprimand to the journalist for spreading ethnic hatred.¹⁷⁰

Approaches to media convergence

Italian media regulation has recognised the trend towards media convergence, and, in certain cases, has extended the application of existing provisions to online or electronically available versions of the same media. For example:

- The definition of an ‘editorial product’, contained in the 2001 Law on Publishing, includes media outputs which have “the characteristics of being disseminated by any means, including electronically or via informatics support”. The Law on Publishing also establishes specific criteria for the registration of online newspapers that must be fulfilled if they are to be considered eligible for state funding;¹⁷¹
- In 2015, the Supreme Court extended the definition of print media and related provisions of the Press Law to online publications, on the basis that online publications fulfil the qualifying legal definition of information reproduced via any means and destined in any way to be published;¹⁷²
- In 2016, the Supreme Court clarified that other forms of online communications (such as blogs, mailing lists, social networks, web-forums, and similar) are *not* to be considered online print media and therefore do not enjoy the special constitutional protections afforded to print media. The case concerned the removal of a blog in its entirety from the Internet, ordered by judges as a preventative measure, pending its author’s trial for defamation;¹⁷³ and
- In 2010, the provisions of the AVMSD were incorporated into the Consolidated Act.¹⁷⁴ In order to recognise the trend towards media convergence, the Act introduced the concept of an ‘Integrated Communications System’, defined as a comprehensive media market encompassing television, publishing, the Internet, direct advertising activities, sponsorships, revenues from the public service broadcaster’s annual licence fees, sales of cinema tickets, sales or rentals of DVDs, and direct state grants to publishers.¹⁷⁵ The provisions extend the registration requirements established by law for print media, and the obligation to publish requests for corrections received from whoever feels violated in her/his interests by broadcast content, to broadcast radio and television news programmes and the responsible directors.¹⁷⁶

Although they are not covered by the AVMSD provisions incorporated by Italian legislation, online intermediaries and online platforms – that distribute and publish content – are *de facto* considered media actors by AGCOM, even though AGCOM does not have any regulatory or controlling powers over them. As outlined above, AGCOM has relied on its legislative powers to ensure the protection of minors to set up a Permanent Observatory of Guarantees and Protection of Minors and of the Fundamental Rights of the Person on the Internet and monitor, in particular,

cases of “incitement to hatred, threats, harassment, bullying, hate speech and the dissemination of deplorable content”.¹⁷⁷ The activities of the Observatory ultimately aim to persuade social media operators like Facebook Italy to cooperate in drafting self-regulatory codes of conduct endorsed by AGCOM.

AGCOM is strongly in favour of a review of the AVMSD to extend its application to audiovisual content hosted by intermediaries on online video sharing platforms. According to AGCOM, the scope of the AVMSD should extend to audiovisual media services based outside of the EU territory where their content reaches audiences in the EU and where their presence is relevant in terms of market share in the EU. Additionally, AGCOM recommends amending the existing EU E-Commerce Directive EC/2000/31 to require Internet hosts and providers to adopt self-regulatory or co-regulatory codes of conduct to monitor third-party content, with a view to protecting Internet users – and minors in particular – from harassment and incitement to hatred.¹⁷⁸

Advertising self-regulation

The advertising standards self-regulatory authority in Italy is the **Institute of Advertising Self-Regulation** (*Istituto di Disciplina Autopubblicitaria* or IAP); it was established as a private organisation in 1966.¹⁷⁹ Its members include advertisers’ associations, commercial companies, advertising and communication agencies, advertising agents, associations of Internet operators, radio and television companies and federations, publishers and editors’ associations, and not-for-profit organisations active in the field of public interest advertising and international development.

All members of the IAP are required to comply with the **Code of Advertising Self-Regulation** (Advertising Code), which is formulated and updated by the Directive Board in accordance with the proposals of the IAP Study Committee. An IAP Review Board is able to receive complaints from individuals and consumers’ associations regarding an advertisement or commercial communication, or act independently, to request its removal by means of moral suasion, order its immediate removal in case of a manifest breach of the Advertising Code, or refer the case to the IAP Jury. The Review Board may also be requested to pre-vet the content of an advertisement or commercial communication yet to be published.

The Advertising Code does not currently include any explicit reference to ‘hate speech’, but provides that advertisements and commercial communications “must not offend moral, civil and religious convictions” and “must respect human dignity in all its forms and expressions and must avoid all sorts of discrimination, including gender-related discrimination”.¹⁸⁰

As mentioned above, in 2015 the IAP signed a **Memorandum of Understanding** with the Department of Equal Opportunities, in which the Department of Equal Opportunities undertakes to promptly notify IAP of any commercial communications considered in breach of the principles of equal opportunities and non-discrimination – with specific reference to the need to avoid using images gratuitously depicting violence against women or incitement to violence against women – and the IAP commits to promptly review and remove communications found in breach.¹⁸¹ The IAP and the Department of Equal Opportunities also undertake to draft an annual report on the activities carried out, and put forward proposals for improvement of the Advertising Code.

The IAP has signed a similar Memorandum with the Ombudsman for Childhood and Adolescence to cooperate in monitoring and intervening to remove commercial communications in breach of the dignity of children and adolescents.¹⁸²

Conclusions and recommendations

As highlighted in this report, there are numerous factors contributing to the increase in ‘hate crimes’ and ‘hate speech’ in Italy. Part of the problem appears to be inextricably connected with the long-standing national climate of economic and political instability and the so-called ‘migration crisis’. Other contributing factors include the seemingly accepted tendency for political representatives to use crass and offensive terms in public debates; the lack of professional ethics in the media when reporting on diversity issues; and the popularity of online forums, commentary, and social media as tools to spread incendiary views and opinions. Social media platforms, in particular, are frequently used to target and harass individuals on the grounds of their racial or ethnic origins, gender, different physical abilities, and/or sexual orientation.

What emerges from this analysis is that institutions, civil society, and the media are all acutely aware of the problem and have already undertaken or pledged to carry out legislative, policy, and campaign initiatives to reverse the trend. However, more concerted effort is needed to ensure that adopted measures are effective and in line with international obligations, which strike a balance between the protection of freedom of expression and the prohibition of incitement to discrimination, hostility, and violence.

This report proposes that, at a minimum, the following measures should be undertaken to improve the current situation:

- All relevant legislation – in particular, the criminal law provisions – should be revised for their compliance with international human rights standards applicable to ‘hate speech’;
- The advocacy of discriminatory hatred that constitutes incitement to hostility, discrimination, or violence should be prohibited in line with Articles 19(3) and 20(2) of the International Covenant on Civil and Political Rights (ICCPR), establishing a high threshold for limitations on free expression as set out in the Rabat Plan of Action, as well as prohibitions on direct and public incitement to genocide and incitement to crimes against humanity;
- The protective scope of any measures to address ‘hate speech’ should encompass all protected characteristics recognised under international human rights law, and not be limited to the present protected characteristics of race, ethnic origin, national, or religion. In particular, the list of protected characteristics should be revised in light of the right to non-discrimination as provided under Article 2(1) and Article 26 of the ICCPR;

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- Defamation should be fully decriminalised and replaced by appropriate civil remedies. Moreover, the Italian authorities should refrain from applying provisions of defamation on cases of ‘hate speech’ since the purpose of defamation laws is to protect individuals from false statements of fact, which cause damage to their reputation. Legal actions for defamation do not require an individual to show any ‘advocacy of hatred’ and should be distinguished from ‘hate speech’;
 - The Italian government should abolish all other speech offences that can be inappropriately applied in cases of ‘hate speech’ and which, moreover, also fail to meet international freedom of expression standards. These include, in particular, Article 341-bis of the Criminal Code (insult to public officials) and Article 724 of the Criminal Code (defamation of religion/blasphemy);
 - The guarantees of media pluralism for the promotion of diversity and inclusion of minorities should not be limited to the protection of ‘linguistic’ minorities. Provisions and policies should also address ensuring adequate access to media coverage of other minorities, in particular, racial, ethnic, religious groups, people with disabilities, and LGBTQI individuals;
 - The Italian government should ensure – both in law and in practice – that the equality body, the National Office Against Racial Discrimination (UNAR), is fully independent and autonomous in line with the UN Paris Principles. In particular, UNAR should no longer operate within a government department; rather, it should act as an advisory body to the authorities in drafting legislation, regulations, and practices against ‘hate speech’ and ensuring their compliance with the international human rights instruments to which Italy is party. UNAR should also improve its system for the collection of data on bias-motivated offences in order to include information on the different types of hate crimes reported, the number of prosecutions, and the results of the subsequent legal proceedings;
 - The state and broadcasting regulatory body, AGCOM, should continue its constructive cooperation with media outlets, Internet intermediaries, and social media platforms to respond to ‘hate speech’, including online. Any measures developed in this area should not hold Internet intermediaries liable for refusing to take actions that could potentially infringe their users’ freedom of expression, unless they are specifically ordered to do so by a court or by another competent and truly independent body mandated by law. When promoting codes of conduct in this area, AGCOM should advocate for Internet intermediaries to periodically review their terms of services and community standards, disclose details regarding content removal requests, and be transparent about the reasoning behind decisions to remove or retain content subject to removal requests. Proposed redress mechanisms should be available and accessible to all the parties involved in the removal of content deemed in breach of the applicable codes of conduct;

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- The Italian government should develop and periodically review a comprehensive plan on promoting a culture of tolerance, equality, diversity, and mutual respect in society, including in schools. This should include but not be limited to improving media literacy;
 - Public officials, including politicians, should realise that they play a leading role in recognising and promptly speaking out against intolerance and discrimination, including instances of ‘hate speech’. This requires recognising and rejecting the conduct itself, as well as the prejudices of which it is symptomatic, expressing sympathy and support to the targeted individuals or groups, and framing such incidents as harmful to the whole of society. These interventions are particularly important when inter-communal tensions are high, or are susceptible to being escalated, and when political stakes are also high, e.g. in the run-up to elections;
 - A multi-stakeholder strategy to counter ‘hate speech’ in all its forms and in line with the international human rights obligations should be discussed and adopted in partnership by all relevant stakeholders, including state institutions, civil society organisations, broadcast and print media, as well as Internet platforms and operators; and
 - Journalists’ organisations should recognise that they play an important role in this area and intensify their efforts to provide adequate responses. In particular, they should organise regular training courses and updates for professional and trainee journalists on the internationally binding human rights standards on ‘hate speech’ and freedom of expression and on relevant ethical codes of conduct. Journalists’ organisations should also ensure that ethical codes of conduct on ‘hate speech’ are effectively implemented, and the codes should be widely publicised and internalised by journalists and media organisations in order to ensure a full compliance with them. Effective measures should be taken to address violation of the codes.

Annexes

Major recent and/or ongoing initiatives led by the government, parliament, civil society, and the media on ‘hate speech’ include the following **positive initiatives**:

- **The Special ‘Jo Cox’ Parliamentary Committee on Intolerance, Xenophobia, Racism and Hate:** Launched on 10 May 2016 by the President of the Italian Chamber of Deputies, its members include representatives of the Council of Europe, the UN High Commissioner for Refugees, and human rights organisations. The Committee’s mission was to gather data and research on the issue, through hearings with media experts and operators and social media platforms, and collate the results in a final report that puts forward concrete normative proposals;¹⁸³
- **Prism project (Preventing, Redressing and Inhibiting Hate Speech in New Media):** UNAR and Italian civil society organisations are partners in this project, together with four other European countries (France, Spain, Romania, and UK), funded by the EU Fundamental Rights and Citizenship Programme.¹⁸⁴ It is based on an interdisciplinary strategy and combines research, best practice, and training activities addressed to law enforcement, lawyers, journalists, bloggers, social networks, young people, teachers, and youth workers;
- **Young People Combating Hate Speech Online – No Hate Speech Movement:** This 2012–2014 campaign, under the auspices of the Youth and Civil Service Department of the Presidency of the Council of Ministers and funded by the Council of Europe, aimed to counter online expressions of racism and discrimination by producing educational toolkits and running online campaigns aimed at young people and youth organisations;¹⁸⁵
- **‘Week Against Racism’:** Annually, UNAR organises a special week dedicated to educational and awareness-raising initiatives against racism in schools, universities, and sports and cultural associations. The events are organised around the celebration of UN International Day for the Elimination of Racial Discrimination on 21 March every year;¹⁸⁶
- **‘Intolerance Map’:** The Italian NGO VOX–Osservatorio sui diritti in partnership with three universities in Rome, Milan, and Bari is, for the third consecutive year, drafting a map to identify the insults and discriminatory messages targeting women, people with disabilities, LGBTQI people, and religious minorities posted through Twitter in Italy. The mapping exercise is ‘sentiment-based’: it consists of identifying the use of specific terms and how often they are ‘virally’ shared;¹⁸⁷

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- **Safer Internet Day 2017 – First National Day Against Bullying and Cyberbullying:** On 4 February 2017, the Italian Ministry of Education launched an all-day event dedicated to the analysis of bullying and cyberbullying, with the participation of students aged between 14 and 18 years of age, from schools across the country. The event included the presentation of the results of a national survey targeting young people and the launch of a public service advertising campaign aired on all the major public and private TV channels;¹⁸⁸ and
 - **‘Carta di Roma’ Association** was founded in December 2011 to supervise the implementation of the Charter of Rome for journalists writing on migration and refugee-related themes. Members of the association include Cooperation for the Development of Emerging Countries, Amnesty International, the Association for Legal Studies on Immigration and, representatives from the United Nations High Commissioner for Refugees, UNAR and the International Organisation for Migration. The association promotes training courses for media organisations on the implementation of the Charter of Rome and special awards to encourage accurate and responsible reporting about migration and minorities.¹⁸⁹



Endnotes

¹ European Commission Against Racism and Intolerance (2015) *ECRI Report on Hungary (fifth monitoring cycle)*. Strasbourg: Council of Europe; available from: <http://bit.ly/1t5HIQu>.

² See, e.g., Amnesty International, *Barometer of Hate*, 2018, available from: <http://bit.ly/2F9ZWuW>. The report states that Italy was “steeped in hatred, racism and xenophobia, and unjustified fear of the other”. It identified that 95% of discriminatory and racist ‘hate speech’ on the Internet originated from the three parties belonging to the centre right coalition: North League led by Matteo Salvini - 50% of such speech, Brothers of Italy led by Giorgia Meloni - 27% of such speech, and Forza Italia led by Silvio Berlusconi - 18% of such speech.

³ The National Institute of Statistics (ISTAT) and Department of Equal Opportunities (2014) *Discrimination on the grounds of gender, sexual orientation and ethnic origin*. October; available from: <http://bit.ly/2vW6RjD>.

⁴ See, e.g., COSPE, *BRICKS Against Hate Speech* (2016) *Hate is not an opinion. Hate speech, journalism and migration: National Study Italy*, April; available from: <http://bit.ly/2fXMiiP>; or Lunaria et al (2015), *Together Fighting Against Hate crimes: National Monitoring Report on Hate Crimes, Italy*, May; available from: <http://bit.ly/2kZkjMM>.

⁵ The Committee Final Report and Recommendations, approved on 6 July 2017; available from: <http://bit.ly/2xjBCOY>.

⁶ The text of the letter is available from <http://bit.ly/2kmoYrz>.

⁷ The text of the appeal is available from <http://bit.ly/2iyyOdn>.

⁸ The report is based on a review of existing legislation and its application by relevant authorities, as well as on interviews with key stakeholders, in particular: Andrea Di Pietro, Coordinator of the Legal Bureau of Ossigeno per l’Informazione; Alessandra Lenzi, Audio-visual Content Directorate, Italian Communications Regulatory Authority; Giuseppe Mennella, Professor of Journalist Deontology at University Tor Vergata, Rome and Secretary General of Ossigeno per l’Informazione; Guido Scorza, Legal Advisor on National and European Regulatory Affairs, Presidency of the Council of Ministers’

Team for Digital Development. All the analysis in the report is made on the basis of unofficial translation of the Italian version of respective laws. *ARTICLE 19* takes no responsibility for the accuracy of the translation or for comments made on the basis of any inaccuracies in the translation

⁹ Through its adoption in a resolution of the UN General Assembly, the UDHR is not strictly binding on states. However, many of its provisions are regarded as having acquired legal force as customary international law since its adoption in 1948; see *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).

¹⁰ The ICCPR has 167 States parties, including Italy.

¹¹ See HR Committee, General Comment No. 34 on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para 11.

¹² *Op cit.*, para 22.

¹³ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 September 1950.

¹⁴ Article 10 (1) of the European Convention reads: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises; Article 10 (2), The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

¹⁵ Article 1 of the UDHR states: “All human beings are born free and equal in dignity and rights”; Article 2 provides for the equal enjoyment of the rights and freedoms contained

in the declaration “without distinction of any kind”; and Article 7 requires protection from discrimination.

¹⁶ For a full explanation of ARTICLE 19’s policy on ‘hate speech’, see Hate Speech Explained: A Toolkit; available from: <http://bit.ly/1UvUQ9t>.

¹⁷ General Comment 34, *op.cit.*, para 52.

¹⁸ The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, A/HRC/22/17/Add.4, Appendix, adopted 5 October 2012; available from: <http://bit.ly/2fTNMG6>.

¹⁹ The Rabat Plan of Action has been endorsed by a wide range of special procedures of the UN Human Rights Council; see, e.g. the Report of the Special Rapporteur on FOE on hate speech and incitement to hatred, A/67/357, 7 September 2012; Report of the Special Rapporteur on freedom of religion or belief on the need to tackle manifestations of collective religious hatred, A/HRC/25/58, 26 December 2013; Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on manifestations of racism, racial discrimination, xenophobia and related intolerance on manifestations of racism on the Internet and social media, A/HRC/26/49, 6 May 2014; and the contribution of the UN Special Advisor on the Prevention of Genocide to the expert seminar on ways to curb incitement to violence on ethnic, religious, or racial grounds in situations with imminent risk of atrocity crimes, Geneva, 22 February 2013.

²⁰ HR Committee, General Comment 11: prohibition of propaganda for war and inciting national, racial or religious hatred (Art. 20), 29 July 1983, para 2.

²¹ UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 35: Combating racist hate speech, 26 September 2013, paras 15 - 16. The CERD Committee specifies that five contextual factors should be taken into account: the content and form of speech; the economic, social and political climate; the position or status of the speaker; the reach of the speech; and the objectives of the speech. The CERD Committee also specifies that States must also consider the intent of the speaker and the imminence and likelihood of harm.

²² European Court, *Erbakan v. Turkey*, App. No. 59405/00 (2006), para 56; or *Gündüz v. Tur-*

key, App.No. 35071/97 (2004), para 22.

²³ European Court, *Jersild v. Denmark*, App. No 15890/89 (1992), para 35.

²⁴ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law; available from: <http://bit.ly/2nTmRAi>.

²⁵ For a full analysis, see ARTICLE 19, Submission to the Consultations on the EU Justice Policy, December 2013; available from: <http://bit.ly/2APKRZ9>.

²⁶ HRC Resolution 20/8 on the Internet and Human Rights, A/HRC/RES/20/8, June 2012.

²⁷ General Comment No. 34, *op cit.*, para 43.

²⁸ Guiding Principles on Business and Human Rights: Implementing the UN “Protect, Respect and Remedy” Framework (The Ruggie Principles), A/HRC/17/31, 21 March 2011, Annex. The HRC endorsed the guiding principles in HRC resolution 17/4, A/HRC/RES/17/14, 16 June 2011.

²⁹ Report of the Special Rapporteur on FOE, 16 May 2011, A/HRC/17/27, paras 75-76.

³⁰ Report of the Special Rapporteur on FOE, 11 May 2016, A/HRC/32/38; para 40 – 44,

³¹ *Ibid.*

³² *Ibid.*, para 43.

³³ *Ibid.*

³⁴ Joint Declaration on Freedom of Expression and “Fake News,” Disinformation and Propaganda, adopted by the UN Special Rapporteur on FOE, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 3 March 2017; available from: <http://bit.ly/2meFQ6g>.

³⁵ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, Article 14(1).

³⁶ *Ibid.*, Article 5.

³⁷ Grand Chamber of the European Court, *Delfi*

AS v. Estonia, No. 64569/09, 16 June 2015.

³⁸ *Ibid.*, Judges Sajó and Tsotsoria's Joint Dissent Opinion. See also ARTICLE 19, *Delfi AS v Estonia* Case Comment: Strasbourg Undermines Freedom of Expression, 1 October 2015; available from: <http://bit.ly/2zQTEur>.

³⁹ For example, in *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, No. 22947/13, 2 February 2016, the European Court found a violation of Article 10 of the European Convention where a self-regulatory body of Internet content providers and an owner of an online news portal were held liable for defamatory comments posted by a third party, which the parties removed on receipt of notice.

⁴⁰ European Court, *Pihl v. Sweden*, No. 74742/13, 9 March 2017.

⁴¹ For further analysis, see: Dirk Voorhoof, *Pihl v. Sweden*: non-profit blog operator is not liable for defamatory users' comments in case of prompt removal upon notice, Strasbourg Observers, 20 March 2017; available from: <http://bit.ly/2zMUQB8>.

⁴² European Commission, Code of Conduct on Countering Illegal Hate Speech, signed on 31 May 2016; available from: <http://bit.ly/1XLCJ-Vo>.

⁴³ Council Framework, Decision *op.cit.*

⁴⁵ For the criticism of the Code of Conduct, see ARTICLE 19, EU Commission Code of Conduct for Countering Illegal Hate Speech Online and the Framework Decision, June 2016; available at <http://bit.ly/29BVUJh>.

⁴⁶ Constitution of the Italian Republic, published in the Official Bulletin of 27 December 1947 and further amended; available from: <http://bit.ly/1hARFPS>.

⁴⁶ Article 21 of the Constitution states: "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. Seizure may be permitted only by judicial order stating the reason and only for offences expressly determined by the law on the press or in case of violation of the obligation to identify the persons responsible for such offences. In such cases, when there is absolute urgency and the timely intervention of the Judiciary is not possible, a periodical may be confiscated by the criminal police, which shall immediately - and in no case later than twenty-four

hours - refer the matter to the Judiciary for validation. In default of such validation in the following twenty-four hours, the measure shall be revoked and considered null and void. The law may introduce general provisions for the disclosure of financial sources of periodical publications. Publications, performances, and other exhibits offensive to public morality shall be prohibited. Preventive and repressive measure against such violations shall be established by law."

⁴⁷ Constitutional Court, Decision No. 105 of 15 June 1972. It provides that "general interest to information indirectly protected by Article 21" which entails the existence of "pluralism of sources, free access to them and the absence of any unjustified restrictions, even temporary ones, to the circulation of news and ideas".

⁴⁸ The Constitution, *op.cit.*, Article 68 para 1 and Article 122 para 4.

⁴⁹ Law No. 112/2004 of 29 April 2004 (Gasparri Law).

⁵⁰ Law No. 112 of 3 May 2004, available from <http://bit.ly/2uj41nK>, and Legislative Decree No. 177 of 31 July 2005, Consolidated Act on radio and audiovisual media services (Consolidated Act; available from: <http://bit.ly/2sAcl-MZ>.

⁵¹ *Ibid.*, Article 3.

⁵² *Ibid.*, Article 4, (b).

⁵³ *Ibid.*, Article 4(c).

⁵⁴ The Consolidated Act, *op.cit.*, Article 4.

⁵⁵ The Gasparri Law, *op.cit.*, Article 10; and Consolidated Act, *op.cit.*, Article 34.

⁵⁶ The Self-Regulatory Code on TV and Minors, Articles 3.1, 3.3 and Article 4.3; available from: <http://bit.ly/2r76nrM>.

⁵⁷ The Consolidated Act, *op.cit.*, Articles 32 (5), 36-bis and 40.

⁵⁸ The Gasparri Law, *op.cit.*, Article 13 and Consolidated Act, *op.cit.*, Article 10.

⁵⁹ The Consolidated Act, *op.cit.*, Article 1-ter, 36 and 36-bis.

⁶⁰ Article 2 of the Constitution "recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed".

⁶¹ Legislative Decree No. 125 of 9 July 2003;

available from: <http://bit.ly/2r71sHu>. Through the Decree, the Italian Parliament ratified the EU Directive 2000/43 of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial and ethnic origin.

⁶² Equal treatment is defined as “the absence of any direct or indirect discrimination based on race or ethnic origin”.

⁶³ *Ibid.*, Article 2.

⁶⁴ Legislative Decree No. 125, *op.cit.*

⁶⁵ See Report on the effective implementation of the principle of equal treatment of persons irrespective of race or ethnic origin and mechanisms for protection, 2014; available from: <http://bit.ly/2r6VGW8>.

⁶⁶ Legislative Decree No. 125, *op. cit.*, Article 5-6.

⁶⁷ UNAR, Register of organisations active in the field of fight against discrimination and promotion of the right to equality, February 2017; available from: <http://bit.ly/2rGiw5r>.

⁶⁸ Legislative Decree No. 216 of 9 July 2003, incorporating Directive 2000/78/CE establishing a framework for equal treatment in employment and occupation; available at <http://bit.ly/2sk5FY2>.

⁶⁹ Law No. 67 of 1 March 2006; available from: <http://bit.ly/2s19Nvm>; and Legislative Decree No. 198 of 11 April 2006; available from: <http://bit.ly/2sItNAS>.

⁷⁰ Legislative Decree No. 5 of 25 June 2010; available from: <http://bit.ly/2r0Na78>.

⁷¹ Tuscany, Regional Law No. 63 of 15 November 2004; available from: <http://bit.ly/2uD7U6W>.

⁷² The Regional Law No. 63 of 15 November 2004, Articles 13-14.

⁷³ Umbria, Regional Law No. 3 of 11 April 2017; available from: <http://bit.ly/2zd1TnD>.

⁷⁴ The Regional Law No. 3 of 11 April 2017, Article 10.

⁷⁵ Law No. 654 of 13 October 1975 as amended by Law No. 205 of 25 June 1993 (“Mancino Law”) and by Law No. 85 of 24 February 2006; available from: <http://bit.ly/2thoqes>. The Law was adopted to ratify the ICERD.

⁷⁶ Law No. 85 of 24 February 2006.

⁷⁷ The Mancino Law, *op.cit.*, Article 3, para 1 (a).

⁷⁸ The Mancino Law, *op.cit.*, Article 3, para 1 and by Law No. 85 of 24 February 2006.

⁷⁹ The Mancino Law, *op.cit.*, Article 3, para 3.

⁸⁰ Law No. 654, *op.cit.*, Article 3.

⁸¹ The Mancino Law, *op.cit.*, Article 1, para 1-bis. Accessory punishments include the obligation to undertake unpaid community service, the obligation to stay inside one’s place of residence at particular times of the day for up to one year, revoking the validity of the driving licence, passport and identity documents for travelling purposes for up to one year, the ban on detention of any weapons and also the prohibition to partake, in any form, in activities of electoral propaganda for the political or administrative elections after the sentence, and in any case for a period of minimum three years.

⁸² Law No. 962 of 9 October 1967, which ratifies the UN Convention on the Prevention and Punishment of the Crime of Genocide; available from: <http://bit.ly/2tRfLRq>.

⁸³ Law No. 85 of 24 February 2006; available from: <http://bit.ly/2upYVGI>.

⁸⁴ Law No. 48 of 18 March 2008; available from: <http://bit.ly/2upX3x7>.

⁸⁵ Supreme Court of Cassation, Decision No. 36906 of 14 September 2015; available from: <http://bit.ly/2sMnn2A>. The defendant was sentenced to 2 months (suspended) imprisonment and 3 years of interdiction from public offices.

⁸⁶ Supreme Court of Cassation, Decision No. 41819 of 10 July 2009, available from: <https://bit.ly/2tIjqk4>.

⁸⁷ Supreme Court of Cassation, Decision No. 42727 of 22 May 2015; available from: <http://bit.ly/2sGFgEK>. The defendant was sentenced to 13 months (suspended) imprisonment and 3 years of interdiction from public offices.

⁸⁸ *Ibid.*, The Court stated that “a racial prejudice for which a person should be judged for some characteristics that are assumed as fundamental, such as the colour of the skin or the geographic origin,” which the post assumed Ms Kyenge and the presumed rapist had in common.

⁸⁹ The Criminal Code, Article 416; available from: <http://bit.ly/2thgbPh>. It provides: “When three or more people enter into a partnership in order to commit more crimes, those who promote or create or manage the organisation are punished, for that alone, with the imprisonment of a minimum of 3 years up to 7 years” and “the mere participation in the organisation is punished with the imprisonment of a minimum of 1 year up to 5 years..”

⁹⁰ Supreme Court of Cassation, Decision No.33179 of 24 April 2013; available from: <http://bit.ly/2upTC9F>.

⁹¹ The Criminal Code, *op.cit.*, Article 595, para 1 and 3. Criminal defamation is punishable with up to one year imprisonment or a fine of 1,032 EUR, but the punishment can be doubled if the offence consists of a specific factual allegation that cannot be proved as truthful. The punishment can also be increased if the offence is directed at a “political, administrative or judiciary authority or one of their representatives or at a collegial authority”. Moreover, if the offence is committed “through the press or by any other means of publicity”, the punishment is increased; see Article 595 of the Criminal Code and the Law No. 47 of 8 February 1948, ‘Law of the Press’ as amended by Law No. 62 of 2001, ‘Law on Publishing’, Article 13; available from: <http://bit.ly/1iefw1P>.

⁹² See the Decision of the Court of Cassation, No. 5259/1984 (this is so called “sentenza decalogo”).

⁹³ See, e.g., Report of the UN Special Rapporteur on FOE, Mission to Italy from 11 to 18 November 2013; available from: <http://bit.ly/2uFjRca>; or the HR Committee, Concluding Observations on the 6th periodic report of Italy, 119th Session (6-29 March 2017; available from: <http://bit.ly/2ndbVKS>.

⁹⁴ See, e.g., the European Court, *Belpietro v Italy*, App. No. 43612/10, 24 September 2013. The Court called the sanction of imprisonment “disproportionate” to the aim pursued and “unnecessary in a democratic society” because even if the imprisonment is suspended, it can have a significant chilling effect on the legitimate exercise of freedom of expression.

⁹⁵ Supreme Court of Cassation, Decision No. 24431 of 28 April 2015; available from: <http://bit.ly/2th8CrX>.

⁹⁶ Court of Appeal of Trento, Decision No.

315/15 of 1 June 2016; available from: <http://bit.ly/2tD271d>.

⁹⁷ Supreme Court of Cassation, Decision No. 5107 of 17 February 2013; available from: <http://bit.ly/2efrUYY>.

⁹⁸ *Ibid.*

⁹⁹ Supreme Court of Cassation, Decision No. 54946 of 14 July 2016; available from: <http://bit.ly/2A8tGFK>.

¹⁰⁰ The Criminal Code, *op.cit.*, Article 612.

¹⁰¹ Supreme Court of Cassation, Decision No. 563 of 19 October 2011; available from: <http://bit.ly/2uFcHIS>. Article 4 of the Law stipulates that “whoever propagandises the creation of an association, a movement or a group with the characteristics and purposes of [fascism]” is punished with the imprisonment of minimum 6 months up to two years and a pecuniary sanction. The same punishment applies to “whoever publicly exalts representatives, principles, facts or methods of fascisms or its anti-democratic objectives”. The punishment is almost doubled “if the fact relates to racist methods or ideas”.

¹⁰² Law No. 645 of 20 June 1952 implementing the XII Transitory Disposition of the Constitution of the Italian Republic; available from: <http://bit.ly/2tD4DV3>.

¹⁰³ Supreme Court of Cassation, Decision No. 20450 of 17 May 2016; available from: <http://bit.ly/2uZDxaj>.

¹⁰⁴ The Criminal Code, *op.cit.*, Article 278 punishes “whoever offends the honour or the prestige of the President of the Republic” with the imprisonment of 1 year up to 5 years maximum.

¹⁰⁵ *Ibid.*; for this crime, Article 290 imposes a fine between 1,000 and 5,000 EUR.

¹⁰⁶ The Criminal Code, *op.cit.*, Article 415. It punishes with the imprisonment of six months up to five years “whoever publicly instigates to the disobedience of public order law or to hatred amongst social classes”.

¹⁰⁷ Constitutional Court, Decision No. 108 of 23 April 1974; available from: <http://bit.ly/2t1X74b>.

¹⁰⁸ Article 656, Criminal Code, *op.cit.* The penalty is imprisonment up to three months or a fine of 309 EUR.

- ¹⁰⁹ Law No. 115 of 16 June 2016, which further amends Law No. 654/1975; available from: <http://bit.ly/2t1Gypc>.
- ¹¹⁰ The Criminal Code, *op.cit.*, Article 724.
- ¹¹¹ Law No. 1052 of 15 March 2013; available from: <http://bit.ly/1RNDhVi>.
- ¹¹² LGBTQI stands for “Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Intersex”.
- ¹¹³ Report of the UN Special Rapporteur on FOE from the Mission to Italy, *op.cit.*, para 66.
- ¹¹⁴ Law No. 2688, “Provisions to prevent the manipulation of online information [aka ‘fake news’], ensure transparency on the web and promote media literacy”, tabled in the Senate on 28 February 2017; available from: <http://bit.ly/2u0xLYu>.
- ¹¹⁵ The penalty is a fine up to 5,000 EUR.
- ¹¹⁶ The penalty is the imprisonment of no less than one year and a fine up to 5,000 EUR.
- ¹¹⁷ The penalty is imprisonment of minimum two years and a fine up to 10,000 EUR.
- ¹¹⁸ Law on the Press, *op.cit.*
- ¹¹⁹ Law S-1119-B of 25 June 2015; available from: <http://bit.ly/2tD8Iya>.
- ¹²⁰ Law No. 71 of 29 May 2017; available from: <http://bit.ly/2rrlZXj>.
- ¹²¹ *Ibid.*, Article 1 para 2.
- ¹²² *Ibid.*, Article 7.
- ¹²³ *Ibid.*, Article 3. The Roundtable is tasked with: a) monitoring and gathering data on cyberbullying; b) adopting an integrated action plan for the prevention and fight against cyberbullying; c) adopting a co-regulatory code of conduct for the prevention and fight against cyberbullying binding for all the social networking and Internet provider.
- ¹²⁴ Regional Law of Lazio No. 202 of 2 March 2016; available from: <http://bit.ly/2uYsWw3>, and Regional Law of Lombardy of 24 January 2017; available from: <http://bit.ly/2sDCOe3>. The Lombardy Law, in particular, includes the creation of a Regional Advisory Council on Cyberbullying, composed by representatives of the regional government, parents’ associations, sports’ associations, academics and experts of social networking services appointed by the Postal Police (the Police Department that is competent to investigate all potential crimes committed on the web). The competences of this body include gathering information on bullying episodes in the region and assessing, comparing, and implementing best practices to tackle bullying and cyberbullying.
- ¹²⁵ The Criminal Code, *op.cit.*, Article 724.
- ¹²⁶ The Criminal Procedural Code, Articles 74-44; available from: <http://bit.ly/2tDFVnA>.
- ¹²⁷ Legislative Decree No. 125 of 9 July 2003, Article 5-6; available from: <http://bit.ly/2r-71sHu>.
- ¹²⁸ As noted above, these criteria are defined by Law no. 654 of 1975 (as successively amended) – i.e. “propagandises ideas funded on racial superiority or racial or ethnic hatred or instigates to commit or commit acts of discrimination on racial, ethnic, national or religious grounds” or “in any way instigates to commit violence [...] based on racial, ethnic, national or religious grounds”.
- ¹²⁹ Supreme Court of Cassation, Decision No. 41819 of 10 July 2009; available from: <http://bit.ly/2t1jqk4>. <http://www.asgi.it/banca-dati/corte-di-cassazione-quarta-sezione-penale-sen-tenza-del-10-luglio-2009-n-41819/>
- ¹³⁰ Court of Appeal of Trento, Decision No 949/13, N 3195/13, 1 June 2016; available from: <http://bit.ly/2u6FDZy>.
- ¹³¹ The Legislative Decree No. 125, *op.cit.*, Article 7.
- ¹³² UNAR, Contact Centre, 9 September 2013. Available from: <http://bit.ly/2uOHWwa>.
- ¹³³ Government’s Department for Equal Opportunities, Technical Chapter for the Management of UNAR’s Contact Center Support to UNAR, Chapter 6, last updated on 25 November 2015; available from: <http://bit.ly/2t1YcJa>.
- ¹³⁴ See UNAR Guidelines on setting up and structure of territorial observatories and anti-discrimination antennas; available from: <http://bit.ly/2o1gf1M>.
- ¹³⁵ Observatory for Security Against Discriminating Acts – OSCAD; available from: <http://bit.ly/2t1Yjoa>.
- ¹³⁶ The Memorandum of Understanding; available from: <http://bit.ly/2u0KcDX>.
- ¹³⁷ OSCE-ODIHR, Training Against Hate Crimes For Law Enforcement, 4 October 2012; availa-

ble from: <http://bit.ly/2sE7Zpr>.

¹³⁸ Public Security Police Online Service Registration Form; available from: <http://bit.ly/1QNkKbc>, and the Facebook page is www.facebook.com/Commissariato-di-PS-Online-Italia-187255258102830/

¹³⁹ Gasparri Law, *op.cit.*, Article 5 para 1 (a) and Consolidated Act, *op.cit.*

¹⁴⁰ Gasparri Law, *op.cit.*, Article 14 para 2-3 and Consolidated Act, *op.cit.*, Article 43.

¹⁴¹ Gasparri Law, *op.cit.*, Article 15 para 1-2 and Consolidated Act, *op.cit.*, Article 43 para 9; this is in line with the overarching principle established by Article 6 of the Italian Constitution which establishes that “the Republic safeguards linguistic minorities by means of appropriate measures”.

¹⁴² The Constitution, *op.cit.*, Article 6.

¹⁴³ See list of relevant legislation as listed by the Fourth Report of Italy on the Implementation of the Framework Convention for the Protection of National Minorities, 2014; available from: <http://bit.ly/2tjxOwd>.

¹⁴⁴ National Strategy for the Inclusion of Roma, Sinti and Caminanti 2012-2020; available from: <http://bit.ly/2tK3TAn>.

¹⁴⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Framework for National Roma Integration Strategies up to 2020, Brussels, 5 April 2011, COM(2011)173. Available from: <http://bit.ly/2hJpLro>.

¹⁴⁶ Extraordinary Action Plan against Gender and Sexual Violence, adopted with Decree of the Presidency of the Council of Ministers of 7 July 2015 on the basis of Article 5 of Law No. 119/2003; available from: <http://bit.ly/2sk-jWkg>.

¹⁴⁷ Italian Parliament, Chamber of Deputies, Declaration of the Rights on the Internet, 28 July 2015; available from: <http://bit.ly/1VOIKe7>.

¹⁴⁸ *Ibid.*, Article 13 para 2.

¹⁴⁹ Law No. 112 of 3 May 2004; available from: <http://bit.ly/2uj41nK>.

¹⁵⁰ The Consolidated Act, *op.cit.*, Article 4.

¹⁵¹ *Ibid.*, Articles 32 (5), 36-bis and 40.

¹⁵² The Gasparri Law, *op.cit.*, Article 13 and the Consolidated Act, *op.cit.*, Article 10.

¹⁵³ *Ibid.*, the Consolidated Act, *op.cit.*, Article 1-ter, 36 and 36-bis.

¹⁵⁴ The Gasparri Law, *op.cit.*, Article 10 and the Consolidated Act, *op.cit.*, Article 34.

¹⁵⁵ AGCOM, Deliberation No. 424 of 16 September 2016, in force from 2 November 2016; available from: <http://bit.ly/2sDU9DQ>.

¹⁵⁶ AGCOM Board Commissioner’s video interview with newspaper La Repubblica, 31 October 2016; available from: <http://bit.ly/2f2IUCq>.

¹⁵⁷ AGCOM, Deliberation No. 481 of 23 September 2014, entered in force on 5 November 2014; available from: <http://bit.ly/2u6PVZO>.

¹⁵⁸ CO.RE.COM, Web Reputation Portal (Sportello Web Reputation); available from: <http://bit.ly/2tDsHHv>.

¹⁵⁹ The Law on the Press, *op.cit.*, and the Law of 3 February 1969, No. 69 as further amended by Legislative Decree No. 67 of 2017; available from: <http://bit.ly/1lwMjoO>.

¹⁶⁰ *Ibid.* Under Article 29, professional journalists must be over 21 and must have enrolled in the register of trainee journalists, have exercised the journalistic practice for 18 consecutive months, have attended professional courses organised by the Association of Journalists and have eventually passed a written and oral test, whereas publicists must demonstrate that they have exercised a paid journalistic activity for 24 consecutive months.

¹⁶¹ The Criminal Code, *op.cit.*, Articles 348 and 498.

¹⁶² *Ibid.* Under Article 16, the National Press Council is composed of two thirds of professional journalists and one third of publicists that represent each Regional or Interregional Council. Further, according to Articles 20 and 20-bis, the National Press Council is competent, *inter alia*, to give advice to the legislator on the bills that may affect the journalistic profession, to coordinate the activities of the Regional or Interregional Press Councils aimed at adopting or updating self-regulatory codes of conducts applicable to all journalists, to receive and decide over complaints against disciplinary decisions made by the Regional or

Interregional Press Councils and to establish the amount of the annual tariffs owed by the members.

¹⁶³ *Ibid.* Under Articles 3 and 7, the Regional or Inter-regional Press Councils are composed of a fixed number of journalists and publicists who have been members for at least five years. They are elected by the other members of their respective council for three years and can be re-elected at the end of the term. Further, according to Article 11, the Regional or Inter-regional Press Councils are responsible for the administration of the registers of their respective members, who must be resident or have their professional domicile within the territory on which the Councils are competent.

¹⁶⁴ Deontological Code of Conduct of Journalists (Testo Unico dei Doveri del Giornalista) of 27 January 2016, in force as of 3 February 2016, Article 2 (b); available from: <http://bit.ly/2sUycV7>.

¹⁶⁵ *Ibid.*, Article 3.

¹⁶⁶ *Ibid.*, Article 7, and Annex 3 (Glossary).

¹⁶⁷ *Ibid.*, Article 9.

¹⁶⁸ Deontological Code of Conduct of Journalists, *op.cit.*, Article 9 para 1.

¹⁶⁹ The Press Law, *op.cit.*, Article 8.

¹⁷⁰ See, e.g., *Corriere Della Serra* (2017) Terrorism, Belpietro postponed in the opinion of the Libero for the title 'Islamic Bastards'. 1 March; available from: <http://bit.ly/2lbTWrg>.

¹⁷¹ Law No. 62 of 7 March 2001; available from: <http://bit.ly/2twrJyk>.

¹⁷² Supreme Court of Cassation, Decision No. 31022 of 17 July 2005; available from: <http://bit.ly/2u0JXsm>.

¹⁷³ Supreme Court of Cassation, Decision No. 12536 of 24 March 2016; available from: <http://bit.ly/2tXCtXD>.

¹⁷⁴ The Consolidated Act, *op.cit.*

¹⁷⁵ *Ibid.*, Article 2 (l).

¹⁷⁶ *Ibid.*, Article 3.

¹⁷⁷ AGCOM Deliberation No. 481, *op.cit.*

¹⁷⁸ See AGCOM's position paper submitted to the AVMS Public Consultation; available from: <http://bit.ly/2sEaSGP>.

¹⁷⁹ IAP's website is www.iap.it.

¹⁸⁰ Article 11, IAP's Self-Regulatory Advertising Code; available from: <http://bit.ly/2uG56pG>.

¹⁸¹ The Memorandum of Understanding between IAP and the Government's Department for Equal Opportunities, 1 February 2015; available from: <http://bit.ly/2t2maEq>.

¹⁸² The Memorandum of Understanding between IAP and the Ombudsman for Childhood and Adolescence; available from: <http://bit.ly/2oXw5Kt>.

¹⁸³ See <http://www.camera.it/leg17/1313>.

¹⁸⁴ See www.prismproject.eu/the-prism-project.

¹⁸⁵ See www.nohatespeech.it.

¹⁸⁶ See www.unar.it/unar/portal/?page_id=1976.

¹⁸⁷ See www.voxdiritti.it/vox-lancia-la-prima-mappa-dellintolleranza.

¹⁸⁸ See <http://hubmiur.pubblica.istruzione.it/web/ministero/cs040217>.

¹⁸⁹ See www.cartadiroma.org.

