



ARTICLE 19 Europe's comments on DDL 466 (Balboni Bill) reforming defamation

ARTICLE 19 Europe welcomes the opportunity to submit comments on the proposed amendment to Italian defamation legislation, based on the original proposal of Senator Balboni ([DDL 466](#)). This reform is long overdue and we have long urged the Italian government to undertake comprehensive revision of the existing framework on protection of reputation.

However, as an organisation dedicated to promoting freedom of expression, media freedom, and protection of journalists, we are deeply concerned about the proposal, currently being discussed in the Justice Committee of the Senate, which builds on the earlier proposal by Senator Balboni (Balboni Bill). The proposed amendments are problematic in light of international and regional human rights law on freedom of expression and media freedom. Moreover, the reform is not comprehensive enough to adequately safeguard protection of journalists and protection of the right to freedom of expression in Italy as it only focuses on amendments to criminal law provisions. It fails to address deficiencies in civil law on defamation and to provide a robust framework to prevent strategic lawsuits against public participation (SLAPPs).

We urge the Justice Committee not to miss the opportunity to bring the Italian legal framework on defamation in full compliance with international human rights obligations. We call upon members of the Committee to propose amendments to the Balboni Bill that address the key problematic aspects and gaps in the current proposal. These amendments should ensure the full protection of journalists in Italy and uphold the right to freedom of expression.

Background

ARTICLE 19 Europe has consistently [voiced](#) its serious concerns regarding the Balboni Bill since its introduction in September 2022. Most recently, in May 2023, ARTICLE 19 Europe provided a [comprehensive legal analysis](#) with recommendations on the proposals under discussion in the Justice Committee. On that occasion, we highlighted how the original Balboni Bill fell short of international standards on freedom of expression. Consequently, we are disappointed that the Balboni Bill is now the sole proposal under consideration for advancing defamation reform.

The current proposal requires substantial and extensive revision in order for it to align with the judgements of the European Court of Human Rights (see e.g. *Belpietro v. Italy*, 2013, *Ricci*

v. Italy, 2013 or *Sallusti v. Italy*, 2019) and the [Constitutional Court](#) (order 132/2020, 9 June 2020 and judgment 150/2021, 22 June 2021). These judgements call for a comprehensive reform of defamation framework. Furthermore, the reform should reflect the latest developments in Europe, particularly in response to the [rising issue](#) of SLAPPs and the necessity to pass legislation to counter such phenomenon.

The need to fully decriminalise defamation

At the outset, we wish to highlight that the Balboni Bill does not propose decriminalisation of defamation. This is a serious omission in the light of increasing recognition that criminal defamation laws are incompatible with international standards on freedom of expression. Various bodies within the UN system have condemned criminal defamation laws and called on states to abolish them (for instance the UN Human Rights Committee in its General Comment No. 34, para 47). The international consensus on the need to decriminalise defamation has been mirrored in numerous pieces of national legislation and practices that have either decriminalised defamation or significantly reduced its criminal repercussions with a movement towards decriminalisation – including in states such as Argentina, Mexico, Georgia, Ghana, UK, Ireland, the Maldives, Sri Lanka, Togo, Burkina Faso, South Africa, and Zimbabwe.

Hence, full decriminalisation of defamation must be incorporated into the present reform.

Our concerns with the Balboni Bill

In addition to our call for full decriminalisation of defamation, we wish to highlight the following issues that must be addressed in the discussions within the Justice Committee.

1. Disproportionate increase in fines

The Balboni Bill, in Article 1(e), proposes an amendment to Article 13 of the Press Law (Law n.47 of 8 February 1948). We appreciate that it proposes to remove the penalty of imprisonment for defamation, in line with the decisions of the European Court and the Constitutional Court. At the same time, it proposes to replace imprisonment with higher fines:

- From EUR 5K to 10K for defamation through the press;
- From EUR 10K to 50K “if the offense involves attributing a specific false fact, knowing its falsehood, and disseminating it”.

This article not only fails to remove criminal defamation altogether but maintains a chilling effect on freedom of expression. Individuals – especially journalists – can still be criminally prosecuted and subjected to a criminal trial. They face the dangers of being saddled with a criminal record and high fines, as well as the social stigma associated with criminalisation.

We also note that the goal of protecting individuals’ reputations can effectively be accomplished through the civil law. This fact raises serious doubts as to whether criminal defamation laws, by nature more heavy-handed instruments, are justifiable since, under

international freedom of expression standards, the least intrusive effective restriction must always be preferred. Defamation is arguably a private matter between two individuals with which the State should not concern itself. Furthermore, a criminal conviction will usually not provide the defamed person with any compensation, since in most legal systems fines are paid directly to the state, not to the victim of defamation as in civil law cases.

Hence, ARTICLE 19 Europe strongly recommends that Article 1 refrains from increasing fines for defamation through the press and instead abolishes defamation.

2. Introduction of additional criminal sanctions

Article 1(e) of the Balboni Bill also expands the scope of sanctions provided in Article 13 of the Press Law. These will be:

- Suspension of the journalist from practicing their profession for a period ranging from one to six months; and
- Implementation of disciplinary measures as sanctioned by the Order of Journalists.

We note that the possibility to suspend journalists from “practicing their profession” is extremely problematic as it is equivalent in effect to a ‘licensing scheme’. Individuals who wish to work in the media, in particular journalists, should not be required to obtain official permission before commencing their journalism activities (that is, to be subject to ‘licensing schemes’). We refer, for example, to the opinion of the [Inter-American Court of Human Rights rendered in 1985](#), which recognised that compulsory licensing was a restriction on freedom of expression.

International courts have rarely addressed the question of whether an embargo on a journalist, imposed as a criminal sanction, can ever be a justifiable restriction on freedom of expression. It is highly unlikely that an international court would uphold a ban on practising as a journalist, particularly for defamation. It should be presumed that prohibiting journalists from publishing violates international law.

Disciplinary measures imposed by the Order of Journalists under the professional association’s standards have no place in the criminal law. They should stay solely in the realm of self-regulation and not be the subject of statutory regulation.

Therefore, we urge to refrain from imposing this type of sanctions.

3. The right to correction in the criminal law

Article 1(e) of the Balboni Bill introduces a new paragraph to Article 13 of the Press Law, stipulating that journalists, directors, and/or editors-in-chief will not face punishment for defamation if they voluntarily or upon request of the individual publish a correction aimed at rectifying any harm caused to the individual’s honour or reputation.

In principle, less intrusive remedies in defamation cases, including apology and correction, are more speech-friendly and should be prioritised. While we understand the intention to introduce mitigation of criminal culpability, we reiterate that this will change nothing as long

as defamation remains a criminal offence. We maintain that defamation should be fully decriminalised in first place. The right to correction can be then integrated within the broader context of civil defamation law reform.

Needed shift of focus on SLAPPs

ARTICLE 19 Europe notes that decriminalisation of defamation (see above) should not happen in isolation. Criminal defamation must be replaced by appropriate civil defamation legislation that fully aligns with international standards on freedom of expression and the protection of reputation.

We are disappointed that the Committee focuses only on the issues proposed in the Balboni Bill and fails to consider comprehensive reforms of civil defamation in the Civil Code. Additionally, given our previously voiced [concerns about the threats posed by SLAPPs in Italy](#), we urge the Justice Committee and its members to consider proposing the following measures in accordance with the [EU Anti-SLAPPs Directive](#) and the [recommendations](#) from the Committee of Ministers of the Council of Europe:

- **Introduce the possibility of early dismissal of cases:** The Committee should amend the Code of Civil Procedure to allow defendants in SLAPP cases to promptly file for dismissal of the case along with an incidental claim for damages if they believe the claim is a SLAPP. The case should be dismissed if the defendant can demonstrate that the statement in question was made concerning official proceedings or a matter of public interest, unless the claimant can prove the claim's legal merits, absence of manifest unfoundedness, and absence of elements indicating abuse of rights or procedural laws, in which case the motion shall be denied. The Code of Civil Procedure should ensure that judges can assess a claim for early dismissal expeditiously (e.g., by establishing a specific deadline), and the defendant should have the opportunity to be awarded damages as a result of such a declaration of inadmissibility.
- **Reverse the burden of proof:** The Civil Procedure Code should introduce provisions, mandating that in SLAPP cases, the burden of proof would be on the claimant once it is determined that the content or conduct (which is the subject of the case) was published in the public interest.
- **Adopt a comprehensive system of financial and legal support for defendants in SLAPPs cases:** Legislation should broaden the eligibility for legal aid for defendants acting in the public interest by extending the provisions of Decree of the President of the Republic No. 115 (D.P.R. May 30, 2002 n.115). Extending the right to access free legal aid would assist media outlets and journalists defending against SLAPP cases, which might otherwise face significant financial strain or even closure due to financial constraints. Such support is crucial as financial costs often determine the outcome of SLAPP cases, where claimants are typically well-resourced individuals and defendants frequently incur substantial expenses to secure legal representation.
- **Introduce cap on damages:** As a part of reform, the Code of Civil Procedure should set a reasonable and proportionate maximum amount for damages awards that can be sought

in defamation cases arising from the exercise of the right to freedom of expression and related public participation activities. Damages should not exceed the median equivalised net income in Italy and should consider the defendant's individual circumstances as well as the broader chilling effect that the award may have on the exercise of the right to freedom of expression.

Conclusions

ARTICLE 19 Europe urges members of the Justice Committee in the Senate to consider these recommendations and address them in the proposed legislation. We stand ready to provide any additional assistance and expertise that would help the Justice Committee and the Parliament in their deliberations about this bill and in the ongoing discussions surrounding defamation reform.



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