

OSSIGENO/4
The world is looking at us
International observatories on Italy

In March 2011, Dunja Mijatovic, the OSCE (Organization for Security and Co-operation in Europe) Representative on Freedom of the Media, commented on some serious cases of intimidation and threats against Italian journalists reported by Ossigeno per l'Informazione. She said: «I call on the Italian authorities for an open and fast investigation on all the cases of threatened journalists. I am really worried» – she added – «about the climate of violence and intimidation in Italy against the journalists who work on issues of public interest and on news dealing with organised crime. The attempts to silence investigative journalism threaten the principles of democracy. It is even more alarming that this kind of attacks remain unpunished».

Vienna, three admonitions from OSCE

In 2010, Mijatovic had already reprimanded Italy about the “wiretapping bill”. Berlusconi’s government answered on 15 June 2010 with a notice of protest, defining the OSCE intervention as inopportune and bordering on interference. A few days earlier the Senate had approved the wiretapping bill. It was only awaiting ratification by the Chamber of Deputies, a step the government was pushing, although the bill was strongly criticised by public prosecutors, journalists and international organizations. Mijatovic had warned that «the bill would seriously interfere with investigative journalism and that the Parliament must reject it or modify and adjust it according to international standards of press freedom. I am worried» – she stated – «that the Senate approved a bill which would seriously damage investigative journalism in Italy. Journalists must be free to report all the news of public interest, they must be free to conduct a responsible inquiry». A few weeks later, especially after the substantial veto of the Italian President Giorgio Napolitano, the “gag bill” (as it is called in Italy) was definitively abandoned.

OSCE mentioned the problem again on 7-8 June 2011, in Vilnius, at the “Conference on Safety of Journalists”, which ratified a document calling on «the governments’ duty to ensure safe working conditions for media professionals and to openly fight acts of violence against journalists. Attacks against them must be considered as attacks against democracy». The Vilnius Conference stressed that journalists can do a lot to improve their own safety, but their initiatives can be effective only if governments perform the duties mentioned by the document and if they implement «the capacity, the tools and the structures that can rapidly and firmly punish the acts of violence (against journalists) and run proper investigations, in order to create the transparency which could give credit to the efforts of the courts».

In particular, the 70 OSCE participating States, and Italy among them, were given the following recommendations:

- Strongly encourage governments of OSCE participating States to treat violence against journalists as a direct attack on freedom of expression, and publicly refute any attempt to silence critical or differing voices in the society.
- Recommend that governments give their full political support to the strengthening of media freedom by promoting safe and unimpeded conditions for journalists to perform their professional duties.

- Encourage legislators to increase safe working conditions for journalists by creating legislation that fosters media freedoms, including guarantees of free access to information, protection of confidential sources, and decriminalising journalistic activities, including defamation and libel.
 - Advocate that the authorities make it their priority to carry out swift and effective investigations, sending a message to society that perpetrators and masterminds of violence against journalists will be efficiently brought to justice.
 - Urge that law enforcement agencies be given sufficient resources and expertise to carry out effective investigations in the particular field of the media and to develop practices that respect the legal rights of members of the media, including their unhindered access to information during public protests or in cases of civil and public unrest.
 - Call for due weight to be given to the public interest in judicial procedures initiated against journalists as a result of their professional duties, and to ensure that such cases are handled without delay and in a transparent manner.
 - Call upon law enforcement agencies and media to jointly establish good practices that can increase the safety of members of the media and to engage in joint training activities to promote these practices.
 - Support the work of the OSCE field operations in their important role in assisting participating States in this regard and encourage field operations to undertake further projects aimed at capacity building and training for the media, including the promotion of dialogue between the media and law enforcement agencies.
- These recommendations are implicitly addressed especially to other OSCE participating States, but they speak to unsolved problems in Italy.

New York. The CPJ on the “Monster of Florence” and the Meredith Kercher murder

The Committee to Protect Journalists (CPJ) of New York is an eminent American NGO that in April 2011 reported to the Italian authorities, with great concern, a few serious violations against freedom of the press in Italy. The same violations were reported in May 2011 by OSCE. They dealt with the behaviour of public prosecutor Giuliano Mignini who supposedly threatened and harassed blogger Frank Sfarzo and other journalists working on the investigations of the “Monster of Florence” and on the Meredith Kercher trial – the British student murdered in Perugia in 2007 - led by Mignini himself. The Italian authorities did not answer those reports.

According to the CPJ, the Italian investigators committed misdeeds against journalists, bloggers, writers of enquiring essays and columnists, who were presumably attacked after analysing and criticising the investigations, after raising doubts about the evidence on the basis of which American Amanda Knox and Raffaele Sollecito were sent to prison for four years and found guilty of homicide in first instance. Those journalists had expressed doubts since the very beginning of the trial, which three to four years later, ended with a verdict of not guilty. So their opinion was legitimate, reasonable and valid. Those who expressed their doubts, openly dissenting with Mignini and questioning his impartiality, were harassed and attacked.

Something quite similar had happened a few years earlier, when the same prosecutor led the investigations of the “Monster of Florence”. The targeted journalists were: Mario Spezi, Vincenzo Tessandori, Gennaro De Stefano and Roberto Fiasconaro. Then Mignini moved from Florence to Perugia and led the investigations of Kercher’s

murder and, according to the CPJ, other journalists were attacked: blogger Frank Sfarzo (beaten up and illegally arrested); Giangavino Sulas and Umberto Brindani, respectively, reporter and editor-in-chief of the magazine *Oggi* (both sued for libel); American writer Douglas Preston; the newspaper *West Seattle Herald*; and American writer Joe Cottonwood.

In a report from 23 June 2011, at the OSCE Permanent Council the Representative on Freedom of

the Media brought up the Sfarzo affair and suggested that in Italy the freedom of the press seems not to be fully guaranteed.

Dunja Mijatovic said: «On 24 May 2011, I reported the case of journalist Frank Sfarzo to the Italian authorities. Sfarzo was repeatedly harassed after he started to write about the investigations on the death of the British student, killed in November 2007 in Perugia, while she joined an international student exchange programme. I will make reference to three particularly worrisome incidents. On 10 May Giuliano Mignini, public prosecutor of Perugia and leading prosecutor on the Kercher case, obtained an order from the Court to “precautionarily close” Sfarzo’s blog, *Perugia Shock*, dealing with the criminal investigation on Kercher’s murder. On 23 February, Sfarzo was criminally sued by Mignini for “libel through a website”. In September 2010, five police agents, presumably supervised by Mignini, burst into Sfarzo’s apartment, without showing any warrant or identification badge. In my letter I pointed out that no website should be closed as a precautionary measure, because it violates the citizens’ right to be informed about issues of public interest. I also stressed that a criminal action against a journalist based on his critical opinion violates the international standards for freedom of the media, and I recalled that my Bureau held a long campaign for the decriminalisation of libel».

On the eve of the appeal trial of Perugia, the CPJ described with concern the same circumstances and asked the Italian authorities to take “rapid measures to ensure that the reporters following the trials have the freedom to write reports and articles with no fear of retaliation”. The CPJ’s request was addressed to a number of authorities (among them, the President of the Republic, the Prime Minister, several ministers) and also sent to some newspapers.

The OSCE’s admonition did not resound on the Italian press. The CPJ’s request caused a sensation in the USA, where the trial of Amanda Knox was followed from the start by the media with worry and emotional participation, starting off a real campaign in Amanda’s defence. A few Italian newspapers simply reported that this CPJ document existed, without describing its contents and presented it as an initiative of the American pro-Amanda Knox lobby. Italian authorities did not answer the OSCE nor the CPJ.

Nobody cared to check on the condition of Sfarzo, defined a victim both by the CPJ and the OSCE. After the CPJ report, thanks to Andrea Gerli’s patient work, Ossigeno contacted Sfarzo, who is understandably reluctant to speak publicly about his troubles. The blogger is worried about the legal actions against him, which are still not entirely clear. The silence and the climate of isolation around his case – an inexplicable climate – increase his worry. It is clear that Sfarzo deserves solidarity as a victim of the abuses of the criminal law on libel. An abuse which is far more serious because it involves a public prosecutor, an officer of justice, making excessive and exploitive use of the often-decried law against someone who openly criticised his work. A representative of the prosecution deserves the highest respect and must not be mocked, but he cannot expect to be considered infallible and to avoid criticism.

Giuliano Magnini is already known for his rough and sometimes excessive behaviour towards journalists who do not worship everything he says and does. In January 2006, in Florence, he was sentenced in first instance to 16 months' imprisonment for abuse of authority, for running illegal and punitive investigations on a few enquirers and journalists who did not share his methods and criticised his enquiries on the Monster of Florence. On 22 November 2011, the sentence was nullified by the Appeal Court of Florence on the grounds of territorial incompetency regarding another aspect of the trial. The acts were conveyed to the Court of Turin where the trial will begin anew. It is likely that the crime will expire because of the statute of limitations before the new sentence is handed down.

The most serious aspect of the facts of Perugia, according to the experts of CPJ, is that in front of such abuses and the victims' protestations, there was not a proper response from the Italian public authorities, who should have protected these journalists' right to information and expression.

Vienna again. The IPI's mission in Italy

Recently, the International Press Institute of Vienna also dedicated special attention to Italy. Founded in 1950 at Columbia University of New York, the IPI is one of the world's oldest organisations for the protection of human rights, and especially, freedom of the press and expression. The institute's staff includes eminent journalists and columnists from all over the world. The institute publishes on its official website a counter of the journalists killed in the world during the running year. It constantly monitors the violations to the freedom of the press and carries out field missions, every year in a different country, to test the climate in which publishers and the press operate. Over the last years, the IPI carried out missions in Bangladesh, Sri Lanka and Nepal. But for 2010, the IPI chose Italy. The Italian mission certified that «although the media in Italy have a high degree of freedom, there are a lot of serious problems». In particular, the IPI, as well as other observatories, expressed «worry for the concentration of media ownership and for the absence of incisive law on conflicts of interest» and also «for understanding the difficulties encountered by journalists when they deal with organised crime, especially in the south of Italy, where criminal organisations have a strong influence».

After the Italian mission, the IPI expressed its concern over the punitive use of defamation laws against journalists, for the effects it has both in criminal and civil actions, in terms of compensations. The IPI stresses that the fact that press libel is considered a criminal offence, which can be punished with up to three years' imprisonment, is a violation of all the international rules on the matter. On several occasions, international courts have expressed the opinion that imprisonment is an excessive punishment for libel.

The claims for damages in civil courts from those who consider their reputations damaged by the media, the IPI observed, lead to undue interference on media content, as publishers limit publication of news so as not to become involved in long and expensive legal proceedings.

The IPI considers that, faced with the possibility of being sued for libel and demands of expensive claims for damages, journalists are pushed into self-censorship and this leads to the obscuring of information that is in the public interest.

London. Article 19: «Italy, abolish imprisonment for libel»

In September 2011, the prominent British NGO Article 19 also demanded the decriminalisation of press libel, ruled in Italy by anachronistic laws that stipulate detention for journalists. Article 19 sent an open letter to the president of the Chamber of Deputies Gianfranco Fini, and to the president of the Senate, Renato Schifani. It is an authoritative and justifiable admonition.

Article 19, founded in 1987, is headquartered in London and has branches on all continents. It is committed in «protecting the victims of censorship and dissenting voices, in fighting against the laws and the methods that silence those voices». Article 19 considered it necessary to petition the Italian Parliament after reading the sentence of 10 May 2011 of the Court of Chieti that sentenced to prison three journalists of the newspaper *Il Centro*: copy-editors Walter Nerone and Claudio Lattanzio, sentenced to one year's imprisonment; and ex-editor Luigi Vicinanza, sentenced to eight months. The case caused great sensation because the judges were extremely harsh and denied the possibility of parole, generally granted to first offenders and to all journalists declared guilty of libel. The three journalists were not imprisoned only because they appealed.

All this is «extremely worrisome», says Article 19, pointing out that the Chieti trial is only one of a number trials for defamation through the press that in Italy end with imprisonment.

Recalling historical admonitions of the United Nations and OSCE addressed to Italy to decriminalise libel, Article 19 stresses that the presence in Italy of criminal norms to punish these kinds of violations «does not comply with the elementary principles of democracy nor the international norms on freedom of the press providing that the individual's reputation must be defended against every injustice, but the injustices must not be rectified by sending journalists to jail».

Article 19 takes its name from Article 19 of the Universal Declaration of Human Rights, which ratifies freedom of expression and opinion. Its advocacy for decriminalisation in Italy is passionate and justifiable on the political, juridical and ideological level. It is useful to read the letter in full.

Here, we will quote the most significant passages:

«The experience of many countries that have abolished criminal defamation laws (such as Armenia, Bosnia and Herzegovina, Cyprus, Georgia, Ireland, Moldova, Montenegro, Ukraine, and the UK) shows that civil law can provide remedies for harm to individual reputation along with the possibility of action by self-regulatory bodies».

«The original aim of all criminal defamation laws was to make criticism of monarchs or governments a criminal offence and to silence dissent. Today, defamation is, arguably, a private matter between two individuals with few public consequences. Any criminal law regulation, and especially the potential for imprisonment, is therefore inappropriate».

«ARTICLE 19 is strongly convinced that the imprisonment of journalists for defamation is an anomaly in a democratic state such as Italy».

In the letter to Presidents Fini and Schifani, Article 19 recalled two previous authoritative admonitions: in 2006, UN Committee for Human Rights called on Italy demanding that «defamation be no longer punished with detention»; in 2007 the Parliament of the Council of Europe, by Resolution 1577, called on the member States for «the abolition, without further delay, of sentences of imprisonment for libel».

Ossigeno's international agenda

The “dark illness” which strikes the Italian press, as we have seen, worries foreign countries, strikes the imagination and, therefore, grabs international attention. In consideration of this, and in order to discover if similar cases can be found in other countries, Ossigeno per l'Informazione has developed an international agenda of activities. The first step was made with the translation of the annual Report 2009-2010 into English, Spanish, German and Chinese and its promotion internationally.

During 2011, Ossigeno promoted three international conventions with the participation of foreign journalists;

-on 9 February in Rome, together with the Spanish Cultural Institute “Instituto Cervantes”, on the topic “News that bothers and threatened journalists: a comparison between Italy and Spain”;

-on 19 April in Rome with “Goethe-Institute”, the German cultural institute, on the topic “Germany and Italy: News on mafia and threatened journalists”;

-on 16 November in Naples with the Università l'Orientale on the subject “Facts and opinions fading away – The gag on the press in Italy and China. Legislation, threats, abuses”.

This agenda will go on with other initiatives. The project includes, among other things, the circulation of an English-language edition of the Latest News from Ossigeno.