United Nations: The mission to Italy of the UN Special Rapporteur on freedom of opinion and expression

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In November 2013 the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, undertook an official visit to Italy and on April 29, 2014 delivered his Report. Not surprisingly, the UN Special Rapporteur acknowledges that Italy protects freedom of opinion and expression and the Italian legal framework is in line with the relevant international standards. At the same time, the UN Special Rapporteur raises some concerns and recommends the adoption of certain measures.

Although Resolution 1577 (2007) of the Council of Europe Parliamentary Assembly recommended the decriminalisation of defamation, Italian law still treats libel and slander as crimes. The Italian Parliament is in the process to approve a bill according to which defamation will be no longer punished with imprisonment. However, according to the UN Special Rapporteur's recommendation, defamation should be decriminalised completely and transformed from a criminal to a civil action.

In addition, the Parliament should remove Article 341 bis of the Italian Criminal Code, which punishes insults directed to public officials in the presence of other people. The UN Special Rapporteur deems that criticism of public officials is essential for democracy, therefore public officials, whose function is subject to public debate, should not enjoy a stronger protection from criticism and insults than any other citizen.

The UN Special Rapporteur urges the Government to promote and protect media diversity and pluralism by preventing cross-ownership of print and broadcast media. Therefore, Mr. La Rue regrets the 2012 amendment that removed the ban on broadcasters who operate more than one national channel owning or purchasing shares in newspaper publishing companies. In addition, Mr. La Rue points out that the disclosure of information on ownership, control and sources of revenue of the media would contribute to preventing monopolies, cross-ownership and unlawful concentration of the media, and would also allow people to better interpret the position of various media groups.

The UN Special Rapporteur deems that the public broadcasting service can significantly contribute to enhancing plurality in the media. However, he stresses

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that out of 9 members of the board of directors of RAI (the Italian public broadcaster), 6 are nominated by the ruling coalition in Parliament and 2 (including the Chairman) are appointed by the Government. According to the opinion of the UN Special Rapporteur, RAI should be placed under the control of an independent body, and other measures should be implemented to prevent political interference in the management and editorial line of RAI.

The UN Special Rapporteur also criticises the current system of appointment of the board members of the Italian Communications Authority (AGCOM). The selection criteria for the AGCOM board membership, and information on the qualifications and professional experience of the applicants should be published and made accessible to the public, including on the Internet. The shortlisted candidates should be called to a public hearing in the Parliament and the final decision should be made through a public vote.

Furthermore, the UN Special Rapporteur believes that all regulations regarding constitutional rights should be approved by Parliament, in particular those affecting the right to freedom of expression and stigmatises that AGCOM may issue regulations based on generic legislation by Parliament. In particular, the UN Special Rapporteur takes a position on the new AGCOM regulation on the protection of copyright on the internet (see IRIS 2014-3/31). According to the UN Special Rapporteur, the establishment of norms protecting intellectual property should remain exclusively within the purview of the Parliament and, although AGCOM may by law apply some limitations on online content, the removal of online content should be decided by the Court on a case-by-case basis, provided that there should never be any liability for the content by the intermediaries.

The UN Special Rapporteur is also concerned about threats and intimidation against journalists and the deteriorating working conditions of journalists (i.e., the proliferation of informal working arrangements through freelance contracts, and the low remuneration received in such cases), which might expose them to further harm and affect their independence.

Mr. La Rue also advises to forbid the ownership of media to members of the Government and elected office holders, to enact a full access to information law applicable to all public institutions with the fewest restrictions possible and to adopt a law on any form of hate speech, including discrimination against the lesbian, gay, bisexual and transgender population, misogynistic messages and incitement to violence against women and persons with disabilities.

In fine, Mr. La Rue reiterates the recommendations made in 2004 by the previous Special Rapporteur that the Italian Parliament should establish a national human rights institution.

In its response, the Italian Government emphasized that (i) criminal sanctions for defamation will be limited (however, no indication on entire decriminalisation was

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given); (ii) cross-ownership arrangements can foster development of the broadcasting sector and (iii) a set of measures to ensure a fair pay for journalists will be adopted.

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue - Addendum - Mission to Italy from 11 to 18 November 2013

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-30-Add3_en.doc

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue - Addendum - Mission to Italy: comments by the State on the report of the Special Rapporteur

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