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Pro bono defence for journalists: two legal defence centres fighting for press freedom in Italy

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Pro bono defence for journalists: two legal defence centres fighting for press freedom in Italy

Ossigeno per l'Informazione and the Italian Coalition for Civil Liberties and Rights explain their work for journalists and non-profit associations who face legal charges or need legal assistance.

Journalists, bloggers, whistleblowers and other individuals who exercise their right to freedom of expression are sometimes in need of legal defence and, often, they are not able to afford it. This is why the existence of support centres offering pro bono legal assistance is of the utmost importance. In Italy, Ossigeno per l'Informazione (Ossigeno) and the Italian Coalition for Civil Liberties and Rights (CILD) are two of the most important organisations in this field.

Litigating against outdated legal norms

Ossigeno (<http://www.rcmediafreedom.eu/Tools/Stakeholders/Ossigeno-per-l-Informazione>) is one of the most important associations working on free expression and free press in Italy. Together with the Italian think tank **Osservatorio Balcani e Caucaso Transeuropa** (<http://www.rcmediafreedom.eu/Tools/Stakeholders/Osservatorio-Balcani-e-Caucaso>), Ossigeno is part of the **European Centre for Press and Media Freedom** (<http://www.ecpmf.eu/>), a European cooperative advocating for media freedom in Europe.

Since 2015, Ossigeno has been offering pro bono legal assistance to journalists and bloggers who face legal charges or suits due to their work. The legal office has been established thanks to the support of the London-based **Media Legal Defence Initiative**

(<http://www.rcmediafreedom.eu/Tools/Support-centres/Media-Legal-Defence-Initiative>) (MLDI), whose interest in the dire state of media freedom in Italy stems from the country still maintaining old and strict regulations such as the 1948 Press Law and criminal defamation.

We met lawyer [Andrea Di Pietro](https://www.flamminiiminuto-chiocci.it/pubblicazioni/12) (<https://www.flamminiiminuto-chiocci.it/pubblicazioni/12>), head of [Ossigeno's legal office](https://notiziario.ossigeno.info/2015/10/a-desk-at-ossigeno-for-journalists-and-bloggers-61917/) (<https://notiziario.ossigeno.info/2015/10/a-desk-at-ossigeno-for-journalists-and-bloggers-61917/>), who explained that “since we have limited funding, we need to make choices as to which cases deserve to be followed.” He elaborated that “the criteria leading this choice are co-essential: first, we defend individuals who lack the support of an editor or a media house, namely freelancers or journalists whose editor will not cover legal expenses.” In Italy, there is no legal duty for the editor to cover such expenses, but traditionally they have been doing it. Currently, only the biggest Italian media outlets do so.

“Second, we look to the substance of the complaint. In order to understand it, we make a prior objective evaluation of whether the defendant has acted in good faith and respected the ethics of journalism” explained Andrea Di Pietro. Also, frivolous and vexatious defamation complaints are frequently made in Italy, and can lead journalists to subsequent self-censorship.

Andrea Di Pietro continued by clarifying that “another important criteria concerns the intimidating power of the plaintiff: politicians, judges, police officers enjoy an unbalanced position of power compared to many defendants, and this fact can refrain the latter from seeking an appropriate defence or from reporting on public authorities in the future”.

Andrea Di Pietro also elaborated on another activity conducted by Ossigeno, which is “strategic litigation”, a process by which the organization selects and pursues “cases that could represent an influential precedent in their field.”

Criminal defamation is still the main legal issue

Ossigeno has been working on about 15 cases in the last two years. Most of them are defamation cases, since criminal defamation is still the main legal issue threatening journalists in Italy.

Criminal defamation is set out under [Article 595](http://www.brocardi.it/codice-penale/libro-secondo/titolo-xii/capo-ii/art595.html) (<http://www.brocardi.it/codice-penale/libro-secondo/titolo-xii/capo-ii/art595.html>) of the Italian Criminal Code, which provides for up to one year of imprisonment for anyone found guilty of the offence. The penalty increases up to two years when the defendant attributes a precise fact to someone, and it increases up to three years when the defamation is committed through the press or otherwise publicly. Finally, penalties are increased if the defamation is committed against a political, administrative or judicial body or one of their representatives; this is called “aggravated defamation”.

“Aggravated defamation” was the charge against [Davide Brunetti](http://notiziario.ossigeno.info/2017/03/acquitted-blogger-brunetti-defended-by-ossigeno-my-calvary-78425/) (<http://notiziario.ossigeno.info/2017/03/acquitted-blogger-brunetti-defended-by-ossigeno-my-calvary-78425/>) – a blogger who wrote about some unauthorized buildings and environmental troubles in the city of Portovenere. The case was instituted by the mayor of the city. Ossigeno's legal office provided Davide Brunetti's defense. His defense [relied](http://notiziario.ossigeno.info/2017/03/defamation-ossigenos-legal-desk-european-rules-to-be-applied-78719/) (<http://notiziario.ossigeno.info/2017/03/defamation-ossigenos-legal-desk-european-rules-to-be-applied-78719/>) on relevant case law of the European Court of Human Rights (ECtHR), especially the judgments in [Reichman v. France](http://hudoc.echr.coe.int/eng?i=001-165023) (<http://hudoc.echr.coe.int/eng?i=001-165023>) and [Renaud v. France](http://merlin.obs.coe.int/iris/2010/6/article1.en.html) (<http://merlin.obs.coe.int/iris/2010/6/article1.en.html>). The former judgment established that a journalist may ask “allusive” questions that may suggest impropriety on the part of an individual, without being found to have made

a statement of fact that is susceptible to proof under defamation law.

While *Renauld v. France* reiterated that a journalist enjoys the right to use very polemic and virulent expressions (e.g. see [Handyside v. UK](https://globalfreedomofexpression.columbia.edu/cases/handyside-v-uk/) (<https://globalfreedomofexpression.columbia.edu/cases/handyside-v-uk/>)), especially when they regard a public figure such as a mayor. In fact, a mayor should demonstrate a greater degree of tolerance to criticism when it concerns issues of public debate. Davide Brunetti was acquitted in early 2017.

In another case, Claudia Aldi was accused of criminal defamation by three policemen after reporting on specific accusations made against the police. The accusations were made by a man who alleged that the police asked leading questions to his son while investigating a priest for alleged paedophilia. Ossigeno's legal office [appealed](https://notiziario.ossigeno.info/2017/03/la-vittoria-dellufficio-legale-di-ossigeno-sul-caso-aldi-79572/)

(<https://notiziario.ossigeno.info/2017/03/la-vittoria-dellufficio-legale-di-ossigeno-sul-caso-aldi-79572/>) the first instance judgment that reasoned that a journalist should refrain from publishing potentially offensive declarations made by third parties even if they are in the public interest. On appeal, the journalist's attorneys underlined that the public interest in the information itself assured Claudia Aldi the right to report the interview in question. In particular, the defense quoted a judgment of the Italian Criminal Supreme Court that stated that obliging a journalist to verify the historical truth of allegations made by an interviewee would curtail freedom of the press. Moreover, requiring the journalist to censor the offensive statement made by the interviewee would not be in line with his or her duties. [Claudia](https://notiziario.ossigeno.info/2017/04/defamation-claudia-aldi-acquitted-says-thank-you-to-ossigeno-80068/) (<https://notiziario.ossigeno.info/2017/04/defamation-claudia-aldi-acquitted-says-thank-you-to-ossigeno-80068/>) Aldi was eventually acquitted in March 2017 by the Court of Appeal of Perugia.

As a 2017 [OSCE study](http://www.osce.org/fom/303181?download=true) (<http://www.osce.org/fom/303181?download=true>) pointed out, criminal defamation is still actively enforced in Italy and, most of the time, legal reform proposals are either [stalled](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)038-e)

([http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)038-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)038-e)) or will make the situation [worse](http://ipi.media/italian-senate-considers-bill-to-increase-prison-time-for-defamation/) (<http://ipi.media/italian-senate-considers-bill-to-increase-prison-time-for-defamation/>).

Italy also provides special protection to the reputation and honour of the head of state ([Article No. 278](http://www.brocardi.it/codice-penale/libro-secondo/titolo-ii/capo-ii/art278.html) (<http://www.brocardi.it/codice-penale/libro-secondo/titolo-ii/capo-ii/art278.html>) of the Italian Criminal Code), as well as of the State itself, its symbols and its institutions ([Articles 290-292](http://www.altalex.com/documents/news/2014/07/14/dei-delitti-contro-la-personalita-dello-stato) (<http://www.altalex.com/documents/news/2014/07/14/dei-delitti-contro-la-personalita-dello-stato>) of the Italian Criminal Code). In particular, defaming the head of the state can lead to a term of imprisonment of up to 5 years.

The European Court of Human Right has repeatedly warned Italy of the potential "chilling effect" of the mere existence of prison sentences for defamation, which constitutes a disproportionate interference with the right to freedom of expression (e.g., in [Belpietro v. Italy](https://globalfreedomofexpression.columbia.edu/cases/belpietro-v-italy/)

(<https://globalfreedomofexpression.columbia.edu/cases/belpietro-v-italy/>) and [Ricci v. Italy](https://globalfreedomofexpression.columbia.edu/cases/ricci-v-italy/) (<https://globalfreedomofexpression.columbia.edu/cases/ricci-v-italy/>)).

Shortcomings in the right of access to information and protection of whistleblowers

Italy hosts another association working on and defending civil liberties in the context of freedom of expression, which is the [Italian Coalition for Civil Liberties and Rights](https://cild.eu/en/) (<https://cild.eu/en/>) (CILD). CILD is an umbrella organization working on, among other themes, privacy, surveillance, the right to access public information and the enactment of a law on whistleblowing in Italy.

With regard to the right to access public information, one of CILD's members is the association [Diritto di Sapere](http://www.rcmediafreedom.eu/Tools/Stakeholders/Diritto-di-Sapere)

(<http://www.rcmediafreedom.eu/Tools/Stakeholders/Diritto-di-Sapere>), which has been

advocating for the newly enacted Italian Freedom of Information Act (FOIA). This regulation allows individuals to ask for public documents and information stored in public administrations, “but it is largely incomplete” said Andrea Menapace, co-founder and director of CILD. Mr. Menapace explained to us that “in 75% of the cases, access requests are rejected by the Italian administrations or they are even simply ignored and do not receive any answer ... We help the organizations, activists, journalists and individuals who want to file an access request, assisting them in drafting it: for example, for choosing the right terms to be used in order to increase the possibilities of receiving a response.” As for journalists, there is no specific provision granting them a preferential access to information but their request can insist on their right to report.

As to the issue of whistleblowing, CILD started to work on it following the campaigns of [Transparency International](https://www.transparency.org/) (<https://www.transparency.org/>). “However, while they mainly focus on the anti-corruption standpoint, CILD believes it is crucial to adopt a freedom of expression perspective and defend whistleblowers themselves, who often face serious risks and threats after having revealed sensitive information,” explained Patrizio Gonnella, President of CILD. For these reasons, CILD aims to keep public attention high on the whistleblowing theme, while lobbying the Italian institutions for a clear regulation of such issues. In December 2017, a law on whistleblowers has been [enacted](#)

(<http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2017-12-14&atto.codiceRedazionale=17G00193>) in Italy (Law No. 179) It provides anonymous channels of communication for whistleblowers and protects them against dismissal by their employer, but grants limited [guarantees to whistleblowers](#) (<http://www.rcmediafreedom.eu/Publications/Special-dossiers/Whistleblowers-looking-for-European-protection>) when compared to the draft for a European directive proposed in May 2016.

A clearing-house between journalists, non-profit associations, and lawyers

CILD coordinates a [Centre for Legal Action](https://cild.eu/en/legal-action/) (<https://cild.eu/en/legal-action/>) that is offering pro bono legal assistance as well as producing legal research, such as the guide [Know Your Rights: a guide to solidarity at sea](#) (<https://cild.eu/en/2017/07/17/know-your-rights-a-guide-to-solidarity-at-sea/>), which also provides information on journalists’ rights onboard of ships rescuing migrants in the Mediterranean. Increasingly, journalists are intimidated and prevented from reporting through the seizure of their cameras, requests to examine the pictures they have taken, and general psychological intimidation against publishing certain information.

Patrizio Gonnella, president of CILD, explained that they became a *clearing-house*, promoting dialogue between law firms and non-profit associations, connecting the associations in need of legal assistance with lawyers that can provide it *pro bono*. Assistance to associations of journalists and to non-profit publishers is included in this service. Similar to Ossigeno, CILD also embraces the pursuit of strategic litigation that could establish leading legal precedents in their field.

Investigative journalists and whistleblowers are key figures for the free flow of public interest information. Therefore, support centres like Ossigeno and CILD are key institutions for assuring them appropriate legal assistance, especially when the legal system is unfavourable to their services.

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