# ITALY. IMPRISONMENT FOR LIBEL. SOMETHING IS CHANGING

di Andrea Di Pietro

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**OSSIGENO – October 2nd 2010 – The advocate Andrea Di Pietro, coordinator of the Free Legal Aid Office of Ossigeno, comments the recent decision by which the Supreme Court,**

**last September 22nd 2020, annulled a 8 month prison sentence of the journalist Gabriele Carchidi.**

by Andrea Di Pietro – A few days ago, the highly awaited news of the decision of the Fifth Criminal Section of the Supreme Court arrived, the first after the interlocutory order of the Constitutional Court of the 9th June 2020, on a case of a prison sentence (which was not conditionally suspended) applied by the judges of Merit on a journalist. Read here the news

The case is emblematic because in the dock there was not a big name of Italian journalism, but a journalist – some would argue even with these basic characteristics – local, very unscrupulous, prone to the use of expressive methods often over the top .

This type of case – the first one – that went before the Supreme Court is a real mother lode for those who waited to know what the position of the Supreme Court would be.

During this year of legal uncertainty in which the imprisonment rules are still formally in force but with a strong whiff of unconstitutionality, it was interesting to observe what the judges would do at the first opportunity.

The fact of having "brought forward" the non-application of the rules on imprisonment for journalists – rules that will finally be unconstitutional (if the legislative body does not intervene sooner) from the 22nd June 2021 – is a sign of enormous importance, especially because it indicates the direction to be followed by all the Italian Judges of Merit who will have to decide, during this year, whether or not to imprison the accused journalists in their proceedings.

It is, therefore, extremely interesting, , the conclusion reached by the Supreme Court in terms of a transitional arrangement, when it writes that

*"over and above the loyal institutional collaboration with the parliament, within which the interlocutory ruling in question is located, it is evident that it provides a clarification of great importance, which cannot be neglected in view of a constitutionally and conventionally reading of the issue oriented towards the sanction instigated by the applicant. According to the direction indicated by the regulatory and jurisprudential framework evoked by the Court, and pending the decisions of the legislator and those, if any, of the Court itself, the decision to apply the prison sentence can only pass through the assessment of the weight of the defamatory conduct of which the accused is charged; this in order to appreciate – or not – << the exceptional gravity >>, as outlined by the proceedings above, in the presence of which the application of a prison sentence would be permitted ".*

In this sense, we can affirm that the criticised norms, , are already – in fact – unconstitutional and the transitional arrangement is now entirely devolved to the sensitivity of the individual judges who will have to take into account the fact that the rules on custodial sentencing for defamation are now a dead-letter and that the imprisonment sentences imposed will be reviewed, as happened in the case in question, where the Court appropriately annulled the sentence with referral to the Court of Appeal, for a new examination, limited to the *"sanctioning treatment"*.

ADP