

# A stupid law and a perverse "criminal" sentence

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*There is no censorship in Italy, but...*

"Censorship" was abolished and outlawed in Italy sixtytwo years ago. Freedom of the press and of personal opinion is not only established by the Constitution, but also deeply rooted in custom and in all perceptions of civil society. There are, however, some worrying facts. The concentration in a few hands of a large part of the information system. A general, "centralized" myopia of the "dominant culture", that is partly deliberate manipulation and partly unintentional ignorance. A sly, apparently "benevolent", culture of superficiality and vagueness that tends to lull, confuse and subdue.

A disturbing maverick, in this context, is the internet. Originally feared, later ambiguously applauded, anyhow misunderstood, the net remains annoying for those who are in the habit of having control and are irritated, if not scared, by a tool that they can't dominate or "tame".

It would be long to repeat here what I have written several times, since I published *Cassandra* in 1996 and continued with eighty articles in Italian (thirteen also in English) in the "freedom and censorship" section of my website. But a recent episode deserves some comment.

In this ambiguous context there are laws and "norms" that are poorly conceived and applied even worse. One, in particular, is the law on "clandestine press" (1948) to which was added, fiftythree years later (2001) a clumsy definition of "authorization" for "journalistic publications" online.

Before we get into this specific subject, let's look at two articles of the Italian Constitution.

In Article 3 it is stated that «All citizens have equal social status and are equal before the law.» But this isn't quite so. There are laws (in addition to "social status") that make some citizens "more equal than others". And there are several formally organized categories that have improper and unreasonable privileges. In addition to all sorts of limitations (or bureaucratic hindrance) of free enterprise, in business, society and culture, that everyone agrees should be removed, but de facto remain - and sometimes get worse.

In Article 21 it is stated that «Everyone has the right to freely express thoughts in speech, writing, and by all other communication.» Also that «The press may not be controlled by authorization or submitted to censorship.» But this isn't quite so. There are "authorization" rules (as well as other hindrances and privileges) that get in the way of freedom of information and communication (generally defined as "freedom of the press" ever since the concept was established in 1848 by the "Statuto

Albertino" - that in 1861 became the Constitution of what was, at the time, the Kingdom of Italy.)

Within this framework, let's get to the specific case that has, quite rightly, caused a wave of protest and indignation - and to the two awkward laws that have made it possible. The facts are reported (not always accurately) in several online documents. (see the end of the article)

A "criminal sentence" issued by a Court in Modica (Sicily) on 8 May 2008 condemned historian Carlo Ruta, defining his website "clandestine press" because it wasn't formally "authorized" as a newspaper or a magazine. (The site was no longer active. It had been "seized" by the police, by order of the Modica Court, in 2004).

One of the absurdities in this Court decision is that the website was defined as "testata giornalistica" because it had a "heading". By that criterion, any publicly available correspondence written on "letterhead" could be criminally condemned as "clandestine press".

I leave it to historians of law and politics to try to understand why, when fascism had been defeated and censorship had been abolished, in 1948 a law was passed that restricts press freedom and is in contrast to Article 21 of the Constitution.

But let me "try to guess" why in April 2001 the Italian government proposed, and parliament "distractedly" approved, a poorly conceived (and never properly amended) law that extends press regulation to online communication.

All governments and all political parties and parliamentary groups have always declared that they don't intend to limit or control in any way the freedom of the press and, generally, of opinion. On the sincerity and coherence of such statements we can have some doubts, but let's assume that the purpose of the messy 2001 law was not censorship. The idea was to extend to online newspapers and magazines the ambiguous "benefits" (subsidies) that exists for print - as well as the "responsibility" controls (a system that has already caused several distortions and manipulations in its "traditional" definition).

This means that an online "newspaper" or "magazine" must be "registered" as such - and the editor must be a member of an officially regulated association called Ordine dei Giornalisti, a privileged "caste" that many agree should be abolished, but in spite of its absurdity continues to exist. The consequence is that, if the unclear text of the law is interpreted extensively, approximately five million Italian websites could be declared "illegal".

That law has been in existence for five years and there has been no "extermination" of Italian online activity. But the fact remains that, by this or other means, "errors" are possible. Several other flaws in law or regulation have been used to "blacklist" or "seize" online activities that were disliked by authorities or powerful private lobbies.

What makes the "Modica affair" unique is that, so far, it's the only case of the 1948 "clandestine press" law and its 2001 extension being applied to a website. Obviously protest and indignation must not relate only to this individual case, but above all to its general implications.

The editor-owner of that website is not in jail. The "penalty" is a 250 euro fine, plus legal expenses. But obviously the problem is that, for totally unacceptable reasons, he has a "criminal" record and his site has disappeared.

It's rather nearsighted to be complaining about this episode after having paid little attention to the fact that there is a nonsensical, and never properly amended, law. And there are other situations of Italian, or even foreign, websites being "removed" or made inaccessible, for a variety of unreasonable motives, with a too easy "voluntary" cooperation of internet providers who are more concerned with the protection of their business than with the rights and privacy of their customers.

Why was there such a violent aggression on that particular website? It's improper to "guess" making unproven assumptions. But the fact is that the "cancelled" content was about collusion of politics with mafia - probably irksome for some powerful interests. But let's assume, for the sake of this argument, that it was only a "mistake" in the interpretation of an unclear law. The fact remains that such "errors" are possible - and unacceptable in a civilized country.

There are many "tricks" that make it possible to limit, though not totally destroy, freedom of opinion and information.

There is, by the way, a not irrelevant "technical detail". It is possible, by several different means, to make available online whatever has been "prohibited". "Seizing" or "cancelling" has little, if any, effect on criminals or other "wrongdoers". This sort of persecution is very painful for honest people who want to freely express "uncomfortable" opinions, irrelevant for the mischievous, ranging from the extreme of terrorism and organized crime to all sorts of frauds and spamming.

In the (unproven) hypothesis of an absurd legal procedure being influenced by someone who wants to remove uncomfortable information or opinion, the irony is that it backfires, because the resulting "noise" spreads more widely than the original source. But that, of course, doesn't justify the perversity of the Court's decision or the clumsiness of the law.

It's hard to tell how much all this is caused by the ignorance of "powerful" people who don't understand what the net is and how it works - or by an insidious desire to repress freedom of opinion and control sources of information. But the fact is that, no matter how disguised, repressive intentions exist even in the most free and open societies - and watchdogs need to be consistent over time, with constant observation of how things evolve, not just short-lived "indignation" over an occasional episode, soon to be forgotten while abuses continue. And we should never forget that censorship isn't only evil, it is also stupid.

Cassandra (1996)

<http://gandalf.it/free/casseng.htm>

Bad legislation - again (05.2001)

<http://gandalf.it/offline/off37-en.htm>

Italy - blog condemned for clandestine press (only in Italian, 16.06.2008)

<http://punto-informatico.it/2321322/PI/News/italia-blog-condannato-sta...>

"Clandestine press": an unacceptable decision (only in Italian, 9.09.2008)

[http://www.mcreporter.info/stampa/c\\_ruta2.htm](http://www.mcreporter.info/stampa/c_ruta2.htm)

Only a journalist can run a website in Italy? (21.05.2008)

<http://blog.andreamonti.eu/?p=64>

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Fonte: <http://www.edri.org>

Pagina: <http://www.edri.org/edrigram/number6.18/stupid-law-italy>