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ARISA 2: Assessing the Risk of Isolation of Suspects and Accused: The Role of the Media

Disclosure of Information and Media Coverage of Criminal Cases

COUNTRY REPORT ITALY

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1. Background: general overview of criminal proceedings

The Italian criminal trial amid inquisitorial tradition and accusatory guarantees

For a long time, the Italian criminal justice system has been influenced by the inquisitorial paradigm that has traditionally characterized the administration of justice in continental Europe and the former Penal Code of 1930 (the so-called "*Rocco Code*") was an expression of it. It was only in 1988, after the adoption of the new Code of Criminal Procedure (the so-called "*Vassals Code"*), that the system took on a more markedly accusatory imprint, abandoning the previous mixed model, which was articulated in a preliminary phase (secret and left to the investigating judge's probative initiatives) and in a trial (inspired by the accusatory canons of orality and adversarial debate, but which assumed an exclusively formal value, being, in fact, oriented to a mere feedback of the evidence gathered in the previous phase). With the introduction of the new code, the legislator abolished the figure of the investigating judge and redesigned the physiognomy of the criminal trial, configuring it as a trial of parties, characterized by a clear separation of the phases of the proceedings. Furthermore, some basic choices made by the Legislator, the numerous successive modifications made to the Code of Criminal Procedure and a series of interpretative guidelines assumed by the jurisprudence, continue to reveal an "inquisitorial unconscious" which ends up contaminating, in various respects, the accusatory model adopted in 1988.

The ordinary trial starts off with the phase of preliminary investigations in which the Public Prosecutor, with the help of the Judicial Police, collects the necessary evidence in order to adopt his/her own determinations regarding the choice between prosecution and dismissal. When the Public Prosecutor considers that he/she has not gathered sufficient evidence to support the accusation in court, he/she asks the Judge for Preliminary Investigations (GIP) to dismiss the case. The GIP is a "judge of the acts", who occurs in the course of investigations only at the request of a party and in particular cases, which are strictly indicated by the Code of Criminal Procedure (e.g. validation of arrest in *flagrante delicto* and detention of a suspect of crime, application of precautionary measures, interrogation of guarantee, authorization of wiretapping). His/her role is to monitor the work of the Public Prosecutor and to guarantee the fundamental rights of the suspect during the stage of the investigation. The Public Prosecutor, on the other hand, formulates the indictment and, if at the outcome of the investigation he/she considers that he/she has available evidence suitable to support the accusation in court, requests the indictment of the suspect to the Judge of the Preliminary Hearing (GUP). This leads to a further phase of the proceedings (the Preliminary Hearing) which has the main function of allowing a judicial filter of "risky" charges. If the GUP rules in favour of committal to trial, the third and crucial stage of the criminal trial is reached: the trial, indeed. During the hearing, the parties introduce the evidence that is formed before the judge in the full contradictory phase between prosecution and defence. The principle of the separation of the phases is reflected, indeed, in the so-called "system of the double file", according to which the evidence collected by the Public Prosecutor during the investigation does not flow into the trial file and, therefore, cannot be used by the judge for the purposes of the decision.

When does a person become a suspect in a crime?

An individual becomes a suspect from the moment when his/her name is entered in the register of news of crime provided for by Article 335 of the Italian Criminal Code. The latter provision states that "the Public Prosecutor shall immediately enter in the appropriate register any news of crime received or acquired by him/her on his/her own initiative, as well as the name of the person to whom the crime is attributed. The name is entered along with the news or can be added as soon as it appears". Therefore, there isn't a predefined time limit within which the Public Prosecutor, once the news of the crime has been acquired, must provide for the relative registration, nor does the failure to identify the alleged perpetrator of the crime constitute an exception to the principle of immediacy of the same, since the law provides for the existence of a register of news of crime against unknown persons. The entry in the register of news of crime can be known by the person concerned only at his or her request and only if it has not been secretly kept by the Public Prosecutor. More generally, the possibility that the suspect becomes aware of the conduct of investigations against him/her is strongly conditioned by the choices of the Public Prosecutor, given the general principle of secrecy of the investigative phase. Before the notification of the notice of conclusion of the preliminary investigations provided for by Art. 415 bis of the Code of Criminal Procedure, this can happen, in fact, only in the cases of: application of precautionary measures, extension of the investigations beyond the term normally provided for, completion by the Public Prosecutor of an act which the defender of the suspect has the right to assist. In this last hypothesis, in fact, the Public Prosecutor must notify the suspect of the information of guarantee provided for in Art. 369 of the Criminal Code, with which he/she informs the person under investigation of the provisional charge made against him/her, of the regulations of law which are understood to have been violated, of the date and place of the fact assumed as criminal with the contextual invitation to appoint a trusted defender.

In the event that an individual is heard as a person informed of the facts and, from the statements made, elements could emerge from which it is possible to deduce indications of reprehensibility against him/her, the Public Prosecutor is obliged to interrupt the interrogation, informing the declarant of the right to avail himself/herself of the faculty of not answering and to appoint a lawyer (Art. 63 of the Criminal Code). "The person to whom the crime is attributed in the request for indictment, immediate trial, criminal decree of conviction, application of the penalty pursuant to art. 447, paragraph 1, in the decree of direct summons to trial and in the very direct judgment", assumes "the status of accused" (art. 60 c.p.p.). The same Article 60 specifies that "the status of the accused shall be maintained in every state and degree of the trial, until such time as the sentence not to proceed is no longer subject to appeal, the sentence of acquittal or conviction has become irrevocable or the criminal decree of conviction has become enforceable". Article 61 of the Code of Criminal Procedure expressly extends guarantees and any other provision relating to the defendant to the suspect the rights. In the context of the proceedings, the suspect/defendant may be subject to limitations on personal liberty in cases of application of precautionary measures (arrest in flagrante delicto and detention

of a suspect) and precautionary measures.

The first phase of deprivation of liberty: the three types of arrest

Articles 380, 381 and 384 of the Italian Criminal Code provide for three different types of precautionary measures that result in the deprivation of personal liberty: (i) mandatory arrest in flagrante delicto (art. 380 of the Italian Criminal Code), for those who are caught red-handed in flagrante delicto, consumed or attempted, for which the law establishes the punishment of life imprisonment or imprisonment of no less than a minimum of five years and a maximum of twenty years; (ii) optional arrest in flagrante delicto (art. 381 of the Italian Criminal Code of Criminal Procedure), for those who are caught red-handed in flagrante delicto, consumed or attempted, for which the law establishes the penalty of imprisonment of more than three years or of a culpable crime for which the law establishes the penalty of imprisonment of no less than five years; (iii) the arrest of a person against whom there are strong indications of guilt for a crime for which the law establishes the penalty of life imprisonment or imprisonment for a minimum of two years and a maximum of more than six years, or for a crime involving weapons of war and explosives, if there are specific elements which, also in relation to the impossibility of identifying the suspect, suggest that the danger of flight is well-founded. In all cases it is the judicial police, on their own initiative (or in the case of arrest, also at the request of the Public Prosecutor), to carry out the precautionary measure, but the same must be validated immediately (and in any case no later than 96 hours after arrest and/or detention) by the judge.

What happens immediately after the arrest?

Article 386 of the Criminal Code establishes the "duties of the Judicial Police in case of arrest or detention". In particular, the criminal code must inform "immediately" the Public Prosecutor of the execution of the precautionary measure; in the second place, it must deliver to the arrested person a written communication - the so-called Letter of Rights - containing a series of information regarding the rights recognized by the regulations to the person in state of arrest or detention. During this phase, the information of the right to nominate a trusted defender under Art. 96 c.c.p. is vital. The Investigative Police is, in fact, obliged to inform "immediately" the defender eventually nominated of the arrest/detainment or, in the absence of such nomination, the one appointed by the Public Prosecutor pursuant to Art. 97 c.c.p. The right to technical defence, recognized as "inviolable" by Art. 24 of the Constitution, is absolute and cannot be renounced. The Investigative Police must, then, place "as soon as possible and in any case, not later than twenty-four hours from the arrest or detention", on pain of ineffectiveness of the precautionary measure, the arrested or detained at the disposal of the Public Prosecutor (habeas corpus ex Art. 13 4 of the Constitution) in which the arrest/detainment has been carried out, except for what is provided for the direct judgment before the court in monocratic composition, by Art. 558 of the Criminal Code. Finally, the criminal code must, with the consent of the arrested/detained person, give, without delay, news of the arrest

or detention to the family members.

Validation of the arrest or detention

Within forty-eight hours of arrest or detention, the Public Prosecutor must, on pain of ineffectiveness of the precautionary measure, request validation from the Judge for Preliminary Investigations, who will arrange for the hearing "as soon as possible and in any case within the next forty-eight hours", giving notice without delay to the Public Prosecutor and the defence counsel (art. 390 of the Italian Criminal Code). The validation hearing (art. 391 of the Italian Criminal Code) takes place in chambers, with the necessary participation of the lawyer. If the latter does not appear, the judge will replace him with another immediately available. During the validation hearing, the Judge for Preliminary Investigations must: (i) verify that the arrested/convicted person has been given the so-called Letter of Rights and, if necessary, supplement the information provided by the Judicial Police; (ii) proceed with the interrogation of the arrested/convicted person. If it ascertains that the arrest/stopping has been carried out legitimately, it validates, by means of an order that can be appealed to the Supreme Court, the precautionary measure and, if the conditions are met, orders the application of a precautionary measure.

Validation of the arrest in flagrante delicto and "very direct judgment"

In cases of arrest in flagrante delicto, the validation of the precautionary measure may follow a different procedure from that described above. Art. 449 of the Criminal Code provides, in fact, that the Public Prosecutor may present the person under arrest directly before the trial judge, so that validation can be carried out and the trial can take place at the same time. The Public Prosecutor has, in such cases, 48 (forty-eight) hours from the arrest of the person. If the Judge validates the arrest, the trial takes place with a different rite from the ordinary one: the "very direct judgment". The most direct judgment is governed by Articles 449-452 of the Criminal Code. This is a special deflating ritual of the preliminary hearing, in which the judge assesses the request of the Public Prosecutor for committal to trial, and is characterised by a contraction of the preliminary investigation phase. The hearing opens, indeed, immediately after the validation of the arrest. It is necessary to underline how the considerable contraction of the trial time corresponds to a significant reduction of the defendant's defensive guarantees: usually, the sentence is issued with the celebration of a single hearing - which generally takes place the morning after the arrest, or in any case, in a rather short time.

Other cases of direct judgment

In addition to the cases of validation of the arrest requested directly from the judge of the trial, the trial can also be celebrated with the forms of a very direct judgment in two other cases, introduced by Legislative Decree No. 92/2008 (converted into Law No. 125/2008) and governed by paragraphs 4 and 5 of Article 449. The first hypothesis occurs in the cases of arrest already validated by the Judge for Preliminary Investigations pursuant to Articles

390 and 391, following which the Public Prosecutor, within thirty days of the arrest, presents the defendant directly to the judge of the trial. The second hypothesis is provided, instead, independently of the arrest in flagrante delicto and concerns the case in which the Public Prosecutor has obtained, during interrogation, the confession of the suspect. In these two hypotheses - arrest validated by the GIP and confession of the suspect - the Public Prosecutor has the obligation to request a very direct judgement, unless this could "seriously" prejudice the course of the investigation.

2. Confidentiality and publicity of criminal proceedings

Article 101 of the Italian Constitution states that justice is administered in the name of the people, who must be able to exercise control over it. A prerequisite for such control is the knowledge of the manner in which it is administered. Article 21 guarantees freedom of the press and freedom of thought. From the combination of these two articles derives the right to judicial chronicle. Because of its intrusiveness in the sphere of personal freedom, there is a presumption of public interest in criminal proceedings, which takes precedence over the right to privacy, identity and reputation, although these rights are also constitutionally guaranteed. The whole question of the relationship between criminal proceedings and the media can be analysed in the light of a necessary balance between these rights.

The publicity of the trial derives from what has just been said. It is an internal publicity, which implies that the parties are aware of the proceedings and acts, except for justified exceptions; and an external publicity, which results into publicity of the hearings. They may be attended by third parties, including information operators.

Public hearings

The principle of publicity of hearings is contained in the Article 471 of the Code of Criminal Procedure, which mainly concerns the hearing. However, there are several exceptions, since most of the time it does not apply to abbreviated rites. There are also exceptions for the hearing. Some categories of persons are excluded from the participation in the hearings: individuals subject to preventive measures, minors, persons in a state of drunkenness (except when their presence is required as witnesses). Beyond these specific limitations, the chairman has, in exceptional cases, the power to limit the number of people attending the hearing.

The chairman may order the hearing to be held in camera even when the taking of evidence may infringe the right to confidentiality of witnesses and private parties with regard to facts that are not the subject of indictment (art. 472 para. 2 of the Italian Criminal Code). In these cases, proceedings are conducted in camera at the request of the defendant or on the initiative of the judge, when the defendant is absent. This is a rule to protect the right to confidentiality, which generally succumbs to the public interest of criminal proceedings.

The judge may order that the hearing should be held in camera also in other cases: when the conduct of the public may disturb the smooth running of the hearings, when it is necessary to preserve the safety of the persons involved in the proceedings (art. 472 para. 3 of the Code of Criminal Procedure) or when it is necessary to maintain secrecy in the interest of the State.[1]

The injured party has the right, in several cases, to request that the hearing - or part of it - should take place behind closed doors. This happens in proceedings that have as their

[1] http://www.archiviopenale.it/File/DownloadArticolo?codice=d03d5b09-ce63-47e3-a730-486da7f9dc9c&idarticolo=15147

object paedophilia (articles 600bis, 600ter and 600quinquies of the Italian Criminal Code) or sexual violence (articles 609bis, 609ter and 609octies of the Italian Criminal Code), or that concern trafficking in persons (articles 600, 601 and 602 of the Italian Criminal Code).

In cases where the victim is a minor, the hearing takes place behind closed doors (Article 472, paragraph 3 bis of the Italian Criminal Code).

The hearing takes place behind closed doors even when the law provides for the use of chamber hearings (Article 127, para. 6 of the Italian Criminal Code), i.e. in simplified rites. However, when the decision taken in chambers is likely to affect a primary asset of the defendant, the latter may request that the hearing take place in public.

Access to the records of criminal proceedings

In the phase preceding the trial or the abbreviated rites, i.e. the phase of preliminary investigations, the obvious need not to compromise the effectiveness of the investigative action prevails. The preliminary investigations take place in the ignorance of the suspects, of which the risk of flight or alteration of the investigative activity is to be avoided. Such ignorance is lacking in cases where the law requires the presence of the defence for the performance of certain acts (such as the evidentiary incident).

The investigation secrecy, according to the provisions of Article 329 of the Code of Criminal Procedure, applies to all acts of investigation carried out by the Public Prosecutor and the Judicial Police, as well as to the requests for authorization by the Public Prosecutor to carry out the acts of investigation and the acts of the judge relating to such requests. This secret lapses when the act becomes known to the suspect. Acts that take place in the presence of the suspect or his/her defence counsel, such as the evidentiary incident, are not covered by a secret investigation. If the suspect's lawyer was not present at the time of the investigation, the secrecy is lifted from the moment the report is filed (e.g. searches, seizures, inspections, etc.).[2]

Summary information provided to the Judicial Police by persons informed of the facts is covered by the secrecy of the investigation as long as the prosecutor does not request the dismissal of the proceedings or exercise the prosecution. The obligation of secrecy also applies to witnesses and private parties.

The PM may allow the publication of individual acts when necessary for the continuation of the investigation. This may happen, for example, when the prosecutor wants to identify persons who may have witnessed the crime. On the other hand, the PM may order, by reasoned decree, the maintenance of secrecy for individual acts, when the defendant allows it or when knowledge of the act may hinder the investigation of other persons. The PM may also order the prohibition of the publication of individual acts or news relating to certain transactions.

Activities aimed at investigating a crime, which may be undertaken by the PM or the Judicial Police following an anonymous report, are not subject to Article 329 of the Italian

[2] https://www.altalex.com/documents/news/2005/03/09/obbligo-del-segreto-e-divieto-di-pubblicazione-di-atti-e-di-immagini

Criminal Code, since they do not presuppose the acquisition of the news of the crime and its communication. The Officer or member of the Judicial Police who gives notice is therefore not punishable for violation of official secrecy. The latter is in any case bound to secrecy pursuant to Art. 15 of Presidential Decree No. 3 of 10 January 1957, as replaced by Art. 28 of Law No. 241 of 7 August 1990, like any other employee of the State.

In the event of disclosure of official secrecy, imprisonment of between six months and three years is envisaged, and imprisonment for a maximum of one year in cases where the crime is culpable (Article 326 of the Criminal Code).

The prohibition of disclosure of acts and images provided for by Article 114 of the Italian Criminal Code also applies to the acts of preliminary investigations. For acts covered by investigative secrecy, disclosure, even partial or in the form of a summary, is prohibited. For those which are no longer covered by investigative secrecy, the publication of the act itself, either in whole or in part, is prohibited until the end of the preliminary investigations (with the exception of pre-trial detention orders, in accordance with the provisions of paragraph 2 of Article 114 of the Code of Criminal Procedure). However, the disclosure of the contents in the form of a summary is not prohibited. There is therefore a distinction between the act and the content of the act. The legislator has recognized the need to preserve the virginity of the look of the judge of merit, whose judgment is presumed to be influenced by the vision of the deed but not by its journalistic summary. It is a principle inherent in the accusatory system, in which the evidence is formed in the contradictory hearing of the trial. This distinction, and in particular the presumption that the judge cannot be influenced by mere journalistic revelations, is denounced as hypocritical by many parties.

In cases where criminal proceedings reach the trial stage, there is a prohibition of publication, even partial, of the acts in the file until the judgment of first instance. For the acts that make up the PM's file, the prohibition lasts until the judgment on appeal. An exception is made for acts relating to the contesting of the crime. However, the disclosure of the contents of the acts remains allowed.

It is forbidden to publish the acts of the debates held behind closed doors "when publicity may involve the disclosure of news to be kept secret in the interest of the State" or when the taking of evidence may result in "prejudice to the confidentiality of witnesses or private parties with regard to facts that are not the subject of the indictment" (Article 114 of the Italian Criminal Code). This prohibition may also be provided for proceedings in which no hearing is held (paragraph 5). The ban ends after 10 years.

It is forbidden to publish images or personal details of minors who are victims or witnesses, unless the Juvenile Court, in the exclusive interest of the minor, or the minors themselves, when they have turned 16 years of age, allows it (art. 114 c.p.p., paragraph 6). It is also forbidden to publish elements that could allow an indirect identification of the minor. The confidentiality of the minor is also protected by Article 13 of the Juvenile Criminal Trial Code, which prohibits the publication and disclosure "by any means, of news or images suitable to allow the identification of the minor involved in the proceedings" (What sanctions in this case?).

It is prohibited "the publication of the image of the person deprived of personal freedom taken while under the use of handcuffs on the wrists or other means of physical coercion, unless the person allows it" (art. 114 c. 6 bis c.p.p.).

Violation of Article 114 is punished with a fine of 258 euro or imprisonment for up to 30 days. To this sanction is added the possibility of a disciplinary sanction by the holder of disciplinary power against the professional figure involved (art. 115 c.p.c.). It is up to the Public Prosecutor to inform the body with disciplinary power.

The sanctions provided for the violation of Article 114 are often considered inadequate to deal with the frequent violations of the prohibition to publish acts or images.

Relations between judicial offices and media

Regarding the communication of the judicial authorities with the outside world, and in particular with the media, the new rules on the organization of the Public Prosecutor's Offices (Legislative Decree no. 106/2006) in art. 5, provides that: 1) the Public Prosecutor shall maintain personally, or through a specially delegated magistrate of the office, relations with the media. Paragraph 2 provides that any information relating to the activities of the Public Prosecutor's Office must be provided in an impersonal manner by attributing it to the office and excluding any reference to the magistrates assigned to the proceedings. Finally, the law prohibits the magistrates of the Public Prosecutor's Office from making statements or providing information to the media about the judicial activity of the Office. These rules are ineffective.

Moreover, it contains indications contrary to the code of ethics adopted by the National Association of Magistrates in 1994, which stresses the need, in some cases, to communicate about their activities in order to inform citizens correctly.

CSM guidelines

On July 11 2018, the Superior Council of the Judiciary, the self-governing body of the Magistracy, issued guidelines on the institutional communication of judicial offices with society and the media[3], the aim of which is to regulate and partly uniform their practices. The document is intended to be preliminary to the adoption, "at the level of secondary legislation, of the changes in the regulations necessary to include communication within the provisions on the organization of judicial offices".

The guidelines recommend the setting up of press offices by Courts and Public Prosecutors' Offices, which are generally absent. It is recommended that the objectivity of the information, impartiality (in particular when reporting on the content of an accusation), balance and measure should be maintained. In order to correct current and evident distortions in media relations, it is recommended to avoid "privileged information channels with information representatives", "the personalization of information" and "the

[3] https://www.csm.it/documents/21768/87316/linee+guida+comunicazione+%28delibera+11+luglio+2018%29/4e1cd7cc-a61b-66b0-3f0e-46cba5804dc3

expression of personal opinions or value judgments about people or events".

The document invites magistrates to pay maximum attention to the risks associated with the media exposure of persons involved in the proceedings, the protection of private and family life, especially if minors are involved, the dignity of defendants, family members, victims, witnesses and persons outside the trial, with particular attention to vulnerable persons.

The guidelines refer magistrates to procedural duties such as the protection of the presumption of innocence, respect for the rights of the defence and of the victim and "clarity in the distinction of roles (between magistrate and judge)". It calls for the judged person to be given a central role, also in communication, in relation to the other procedural hubs. Explicit reference is made to the "right of the accused not to learn from the press what should be communicated to him beforehand in a formal manner" and to the "duty of the prosecutor to respect judicial decisions, not in public communication but in his own courts". The explicit objective is to combat the unlawful publication of information.

There is an invitation to select the information to be disclosed on the basis of its public interest and social relevance.

For each public prosecutor's office or court, a person responsible for communication is identified in the person of the head of the office. This role can be delegated. He/she represents a reference figure for meetings with the press. Other magistrates may also take part in such meetings at his indication. This person is responsible for issuing press releases, which must not therefore be issued by individual prosecutors. There is an invitation to magistrates to communicate cases of public interest for "seriousness, relevance, delicacy", even during the investigation, to the communications officer.

The document recommends magistrates, in their communications, not to interfere with investigations, to respect the confidentiality of investigations and not to communicate sensitive data in an unjustified manner. The person responsible for communication must ensure that no photos of persons in handcuffs and photos or personal details of minors are published. It is recommended to avoid 'any representation of the investigation that would lead to the public being convinced of the guilt of the persons under investigation'.

The offices are required to update their website with decisions taken and communications disseminated and to draw up a summary file of the activity carried out.

For particularly large judicial offices of merit, it is possible to identify two persons responsible for communication (between magistrates) for the civil and criminal sectors.

The use of the press conference tool is envisaged as an exception.

Media access to criminal proceedings

Article 116 of the Italian Criminal Code provides that "whoever has an interest in them may obtain the release" of copies of the documents, except when covered by secrecy of investigation. It is the competent magistrate who decides on the legitimate interest. In

practice, the rule is applied in an arbitrary and occasional manner.[4] It is not the ordinary channel through which information operators come into possession of documents and information, which generally reaches them from legal practitioners.

Until the end of the preliminary investigations, the publication of acts not covered by the obligation of secrecy is prohibited, either in full or in part, with the exception of pre-trial detention orders. However, it is not prohibited the disclosure of their contents in summary form.

The prohibition of publication, even partial, of the acts in the case file of the trial, in cases where it comes to trial, extends up to the sentence of the first instance, and in the case of the acts that make up the PM's file comes to the sentence of appeal. An exception is made for acts relating to the contesting of the crime and the disclosure of the contents of the acts remains allowed.

Art. 147 of the Code of Criminal Procedure allows the judge to authorise the audio-visual, photographic or phonographic recording of the hearing, except in cases where this disturbs the course of the hearing and in the case where the parties give their agreement. Where the magistrate considers that there is a significant social interest in the knowledge of the hearing, he may authorize it even without the consent of the parties concerned, without prejudice to the parties' agreement.

For proceedings taking place behind closed doors, always according to the same article, no filming of any kind may be authorised. The presence of the media is generally excluded in such proceedings.

With respect to the processing of sensitive data at the investigation stage, regarding the detail of the images, the already mentioned prohibition of publication of images of persons in detention applies, unless they allow it. The prohibition of publication of mug shots is explicit. This prohibition is also affirmed by the Deontological Rules relating to the processing of personal data in the exercise of journalistic activity, and in particular in paragraph 2 of Art. 8, with the exception of "relevant reasons of public interest or proven purposes of justice and police". It is considered that the image exposes the person concerned to a greater danger of injury than simply publishing the news in written form[5].

Processing of data of suspects and defendants

The general rules on the protection of sensitive data do not apply in cases of suspected and accused persons because of the presumption of public interest linked to the criminal proceedings.

As far as the trial is concerned, this is public, and with it what is said within it. Preliminary investigation acts, on the other hand, are covered, at an early stage, by the secrecy of the investigation. Even when the secrecy lapses, access is subject to the presence of a specific

[4] *Cf.* Giostra Glauco, Processo Penale e informazione, Milano, Giuffrè, 1989.

[5] https://www.diritto.it/e-illecita-la-pubblicazione-di-fotografie-ritraenti-il-volto-di-soggetti-coinvolti-in-operazioni-di-polizia-e-posti-in-posizione-frontale-se-non-vi-sono-rilevanti-motivi-di-interesse-pubblico-o-compr/, https://www.fnsi.it/cassazione-foto-segnaletiche-pubblicabili-se-candeggiate.

interest on the part of the applicant. Such interest is evaluated by the competent magistrate (Art. 116, Criminal Code).

The journalist can acquire this type of data even without the consent of the person concerned. The dissemination of data is subject to the limits of truth, continuity and public interest, established by the Court of Cassation.[6] It is forbidden to publish personal data and images that allow the identification of minors (art. 116, para. 6 of the Italian Criminal Code, art. 50 of the Privacy Code, art. 13 of Presidential Decree 448/1988), victims of sexual violence, names of people suffering from HIV, names of women who interrupt their pregnancy, the names of minors involved in legal proceedings and the name of the woman who gave up her child for adoption after giving birth asking not to be named.

In the event of non-compliance with these prescriptions, the offence of defamation, provided for by Article 595 of the Italian Criminal Code, is committed.

The protection of confidentiality is mainly ensured on an extra-penal level, through the figure of the Privacy Guarantor.

Criminal proceedings are connected to the right to oblivion, which concerns the phase subsequent to its conclusion.[7] The first jurisprudential definition dates back to 1998. On that occasion, the Court of Cassation identified two criteria on the basis of which it is possible to judge whether the right to oblivion should prevail over the right to news: the time elapsed from the facts and the topicality of the public interest in the diffusion of the news. The Court of Cassation itself, with sentence no. 5525 of 5 April 2012, reaffirmed these principles in the context of modern multimedia communication, affirming the right to contextualisation and even to the deletion of data present on the web. For the Supreme Court of Cassation, "the dissemination of personal events now forgotten by the public is justified by the right to news only if recent events have occurred that are directly connected with those events, renewing their relevance".

[6] Cass. civ. sez. I, 18 ottobre 1984, n. 5259.
[7] https://archiviodpc.dirittopenaleuomo.org/upload/1295-currao2019a.pdf.

3. Media coverage of criminal proceedings

There is a presumption of public interest in relation to criminal proceedings, which gives rise to a general prevalence of the right to news over the right to confidentiality.

The right to news generally derives from Article 21 of the Constitution. With respect to the specifics of judicial news it is appropriate to cite at least Article 101, according to which justice is administered in the name of the people, who must be able to know how.

Among the main regulatory sources that regulate the functioning of the press are Law 47/1948, Law 63/1969, by which the Order of Journalists was established, and the Consolidated Text of the Journalist's Duties of 2016, which summarizes 15 previous deontological charters.[8]

Limits to the right to chronicle in criminal proceedings can be found in the rights to honour and reputation enshrined in articles. 2 and 3 of the Constitution, as well as the presumption of innocence enshrined in art. 27.

The perimeter of legitimacy of the right to chronicle is also defined by sentence 5259 of the Supreme Court of Cassation, of 1984, with which three key principles have been sculpted which, if observed, exclude the danger of incurring the crime of defamation. The principles identified by the Court of Cassation are the truth of information, the continuity of the form of information and the relevance of the information, i.e. the existence of a public interest. The ruling states that "in order for the disclosure of news harmful to honour to the press to be considered a lawful expression of the right to news, and not to involve civil liability for violation of the right to honour, three conditions must be met: 1) the social usefulness of the information; 2) objective or putative truth, provided that it is the result of diligent research; 3) the civil form of the exposition of the facts and their evaluation, which does not exceed the informative purpose to be achieved and is based on loyal clarity, avoiding forms of indirect offence". The limit of truth is understood by the jurisprudence of the Court of Cassation in a restrictive manner. The information must be faithful to the content of the measure, without alteration or misrepresentation.

A guarantee to protect journalistic activity is given by Article 51 of the Penal Code, which excludes punishability where one has legitimately exercised one's right. It is a discriminant that also acts in the event of injury to the honour of third parties, where the principles listed above are respected. It is the judge on the merits who decides on its validity.

Specific rules on the media treatment of criminal proceedings are contained in the "*Testo unico dei doveri del giornalisti",* approved by the National Council on 27 January 2016. In Article 3, the text includes the obligation for the journalist to respect the right to personal identity and to avoid references to the past, except when they are essential for the completeness of the information, as well as the obligation not to publish "the names of relatives of persons involved in cases of chronicle, unless this is indispensable for the understanding of the facts".

Article 8 of the Consolidated Act states that the journalist must observe "the utmost

[8] https://www.fnsi.it/upload/9b/9bf31c7ff062936a96d3c8bd1f8f2ff3/8130b7d880458e51696bec74c4f2cc9c.pdf.

caution when circulating the names and images of persons indicted for minor crimes or sentenced to very light sentences, except in cases of particular social importance". The lawfulness in the diffusion of names and images is therefore also linked to the relevance of the contested crimes. The same article prescribes the journalist to avoid "in reporting the content of any procedural or investigative act, to mention persons whose role is not essential for the understanding of the facts".

In the single text there is a reference to respect for the presumption of innocence for persons involved in criminal proceedings: the journalist "always and in any case respects the right to the presumption of innocence"; "in the event of acquittal or acquittal, he shall always give appropriate notice and update what has been published previously, especially with regard to online publications". It is therefore the duty to update the published news.

There are references to the need to distinguish clearly between facts and hypotheses, reality and journalistic commentary. In addition to the need to distinguish clearly between the different stages of criminal proceedings, not presenting accusatory hypotheses as hypothetical sentences and distinguishing the different stages of judgment. The journalist "takes care that the differences between documentation and representation, between news and commentary, between suspect, accused and convicted, between prosecutor and judge, between accusation and defence, between non-definitive and definitive nature of the measures and decisions are clear".

The rules provide for an obligation of rectification in case of untruthful information. Article 9 of the Single Text provides for this obligation, "even in the absence of a specific request, in a timely and appropriate manner".

The text also provides for the guarantee of the right of reply in the event of "news of accusations which might damage a person's reputation and dignity", and the obligation to inform the public if this proves impossible.

With regard to the sources of the news, the journalist is obliged to cite them in all cases, except where they require confidentiality. There is an obligation, in the reconstruction of criminal proceedings as for other events, not to omit 'facts, statements or details essential to the complete reconstruction of an event'.

Finally, art. 8 of the Code of Deontology on the treatment of personal data in the exercise of journalistic activity provides for the obligation for the journalist, except for the essentiality of the information, not to provide news or publish images or photographs of persons involved in news events damaging the dignity of the person, as well as not to dwell on details of violence, unless he recognizes the social relevance of the news or image. In paragraph 2, the article states that "except for important reasons of public interest or proven purposes of justice and police, the journalist shall not take or produce images and photos of persons in detention without the consent of the person concerned", and in paragraph 3 that "persons may not be presented with irons or handcuffs on their wrists, unless this is necessary to report abuse". These rules are often ineffective.

Sanctions for journalists who do not comply with the codes of ethics are imposed by the bodies of the Association of Journalists, established by Law no. 63/1969, which includes all professional journalists. These may be the Regional and Interregional Councils or the

National Council of the Order. Penalties are imposed in accordance with the provisions of Title III of Law 63/1969. Article 48 of this law provides that "Those registered in the register […] who are guilty of facts not in accordance with professional decorum and dignity, or facts that compromise their reputation or the dignity of the order, are subject to disciplinary proceedings".

Disciplinary proceedings may be initiated ex officio by the Regional or Interregional Council or at the request of the Attorney General of the Court of Appeal of the journalist's territory.

If the accused is a member of the same Council of the order from which he/she is to be judged "the disciplinary procedure is referred to the Council of the Order designated by the National Council" (art. 49).

The disciplinary sanctions provided for in Article 51 are of four types and must be pronounced by reasoned decision of the Council after hearing the accused. They are: (a) warning, (b) censure, (c) suspension from the practice of the profession for a period of not less than two months and not more than one year and (d) disqualification from the register. The warning is inflicted in cases of abuse or minor misconduct and 'consists in the detection of the misconduct and in calling the journalist to comply with his duties' (Article 52). It is ordered by the President of the Council of the Order, is addressed orally by the latter and minutes are drawn up, also signed by the secretary.

The journalist who suffers it can ask to be subjected to disciplinary proceedings in the following 30 days. The censorship concerns cases of abuse or serious misconduct and consists of a formal reprimand for the proven transgression. Suspension from professional practice, which is more serious than censure, may be imposed when the member's conduct compromises professional dignity. Finally, the disqualification, provided for by art. 55, is imposed when the journalist seriously compromises "his professional dignity to the point of making his/her permanence in the register, in the lists or in the register incompatible with the dignity itself". Once 5 years have elapsed since the disqualification, the journalist can ask to be readmitted (art. 59). According to art. 57, "disciplinary measures shall be taken by secret ballot", "reasons shall be given, and the person concerned and the public prosecutor shall be notified". Disciplinary action is statute-barred 5 years after the fact, unless criminal proceedings have been brought for it (art. 58).

With regard to corrections or statements by subjects whose images have been published or to whom acts or thoughts or statements considered harmful and contrary to the truth have been attributed, there is an obligation for the newspaper to publish them free of charge (Article 8, Law 47/1948). The corrections must be published no later than two days after the one in which the request was made, "at the top of the page and placed on the same page of the newspaper that reported the news to which they refer". Statements or corrections to periodicals must be published no later than the second issue following the week in which the injured party requested them, on the same page as the newspaper that reported the news to which they refer. In addition, the corrections or statements must refer to the article to which they refer and must be published in their entirety (up to a

maximum of thirty lines). The typographical characteristics must be identical to those of the article reporting the contested statements.

In the event of failure to correct or make a statement or in the event of its publication in violation of the law, the author of the request for correction or statement may ask the court to order its publication, in accordance with Article 700 of the Code of Civil Procedure. Failure to comply or incomplete compliance with the obligation shall be punished with an administrative sanction of between €7,500 and €12,500.

The duty of rectification is also provided for in Article 2 of Law 63/1969 and in the 1993 Charter of the Journalist's Duties, summarised in the aforementioned Consolidated Law on the Journalist's Duties.

In the case of offences committed with publication in a periodical, Article 615 of the Italian Criminal Code provides for the publication of the sentence in the periodical itself, in full or in part.

For crimes committed in the press, the author, the owner of the publication and the publisher are liable in full (art. 11).

The person who considers himself or herself defamed may claim compensation for material and non-material damages suffered pursuant to Article 185 of the Italian Criminal Code. Law 47/1948 provides, in art. 12, the possibility to ask for a further sum as compensation, determined according to the seriousness of the offence and the diffusion of the text.

Defamation in the press, "consisting in the attribution of a specific fact", is punished with imprisonment from 1 to 6 years and a fine of not less than €516 (art. 13). However, if the facts reported concern ongoing criminal proceedings and if they comply with the principles set out above, no penalty is imposed.

The professional journalist has the right not to reveal the source of his/her news, in accordance with the provisions of Article 200 of the Italian Criminal Code. However, professional secrecy may be removed by the Magistrate if this is indispensable for the purposes of acquiring proof of the crime.

As said, for criminally relevant news there is a presumption of public interest. On the other hand, for what is not criminally relevant, news that damages the reputation of others can only be published if there is a public interest. One of the authorities that has the power to impose sanctions in case of violation of this is published is the Guarantor of Privacy, an independent and autonomous collegial body established by Law 675/96, composed of 4 members appointed by Parliament and who remain in office 7 years. The Guarantor supervises the treatment of personal data. It receives and decides appeals on such treatment.

To cite an example case of action of the Guarantor, in 2005, when a national daily newspaper published sentimental sms exchanged between a well-known real estate agent under investigation and a famous actress. Both were public figures. The Guarantor established that the messages not only had no criminal relevance for the investigation of the ongoing bank climbs, but that they were of no public interest to the community.

Therefore, the national newspaper that published them was sanctioned.[9]

Other relevant rules regarding the media coverage of criminal proceedings are those relating to the publication of the acts relating to the preliminary investigations, which represent the phase of greatest interest for the newspapers. As already mentioned, such acts are covered by the investigation secrecy until the moment in which the defence can become aware of them (Art. 329, Criminal Code). The investigation secrecy is designed for the investigating authorities, as well as for anyone who becomes aware of the acts instituted by them. But this is accompanied by the prohibition of disclosure of the acts (Art. 114 of the Code of Criminal Procedure), which is, instead, thought for the media. Such prohibition cannot extend beyond the closure of the preliminary investigations themselves - with certain exceptions. In the event of violation, a fine of up to €258 is envisaged (or alternatively up to 30 days' arrest).

Where not protected by investigative secrecy, news that has emerged in the course of a judicial investigation does not encounter any obstacles to its publication, where it has been legitimately gathered. This also applies to criminally irrelevant news that has emerged in the course of criminal proceedings.

Access to the records of criminal proceedings is governed by Art. 116 of the Criminal Code. This Article provides that "whoever has an interest can obtain the release" of copies of the records of the proceedings. The rule allows, in theory, access by journalists to information relating to criminal proceedings. However, in practice it is applied in an arbitrary and occasional manner, and is not the standard channel through which journalists come into possession of documents and information. This channel is given by relations with legal practitioners (P.M., judges, lawyers, etc.). This practice, which is outside the framework of legality, gives rise to a relationship of dependence of journalists on legal practitioners, the result of which is unbiased information, conditioned by the interests of the parties involved to filter information in an instrumental way, both in content and timing, in addition to a greater fragility of the guarantees protecting the accused.

[9] https://archiviodpc.dirittopenaleuomo.org/upload/5408-ferrarelladpctrim317.pdf.

4. Disclosure of information and media coverage of criminal cases in practice

The judicial authorities communicate through different channels and in different ways. Among those which assume greater media importance are the press conferences of the Public Prosecutor's Offices, usually held immediately after the execution of measures of pre-trial detention, in the offices of the Public Prosecutor's Office itself and in the presence of Prosecutors, top representatives of the police forces who have dealt with the investigations and arrests and journalists.[10] Most of the time they are held by the Chief Prosecutor and the magistrates who have dealt with the investigation, although the presence of the latter is prohibited by Legislative Decree 106/2006. It is the Chief Prosecutor who establishes the time and the practical arrangements connected to it. Press conferences are often held to correct incorrect information or to make appeals to provide useful information for the investigation, as well as to communicate on completed transactions.

In addition to the Prosecutor's Offices and in rarer cases the Courts, the instrument of press conferences is also used independently by police forces. A recent case of blatant violation of the right to identity and numerous other rights by the police forces is that of a press conference that followed a dozen arrests for apartment thefts. One of the leaders of the "Carabinieri" of the city of Padua distributed photos and names of the people arrested so that they could reach as many people as possible. The "Carabiniere" wanted to warn the population to be on their guard once the people in question had finished serving their sentences, which he considered inadequate. The case has caused a stir, but it is significant in its own way.

Press conferences take place when the investigation is given a certain prominence. It is customary for the names, age, gender, nationality and profession of the persons under investigation to be disseminated, as well as images showing them in mug shots or at the time of arrest or translation in prison, however this may be in contravention of current legislation. There are no major differences in the dissemination of such sensitive data between the Public Prosecutor's Offices, Courts and Police Forces. Their dissemination is a widespread practice which is normally not followed by disciplinary measures. The prohibition of disclosure of images and data is not absolute, as mentioned above, but should be limited to cases where justice and police requirements require it. This is not the case. Some prosecution offices, which are more concerned with the right to identity and confidentiality and the presumption of innocence of suspects, deserve to be mentioned for the specific measures taken. The Chief Prosecutor of Naples, in particular, has issued a circular addressed to all police forces, as well as to the members of the Public Prosecutor's Office itself, with a view to put a brake on the disclosure of images, for which a request derogating from the general rule was necessary.[11] The practice, as has been said, is quite

[10] https://archiviodpc.dirittopenaleuomo.org/upload/9677-brutiliberati2018a.pdf.

[11] https://www.questionegiustizia.it/data/doc/1522/la_circolare_del_procuratore_repubblica_napoli_diffusione_pubblicazione_immagini_persone_arresto.pdf.

different.[12]

Police forces communicate frequently by posting on their websites and social channels (facebook and twitter) videos on the operations carried out, within which people then arrested appear, usually with a pixelated face. Social channels are managed in a professional way. The tone of communications are generally self-praising. Within them there is not much attention to the presumption of innocence and data protection of the people involved. It is very common for accusatory assumptions to be presented as a truth already achieved.

The websites of courts and public prosecutors' offices are generally not used for communications about ongoing criminal proceedings. The SCM's guidelines on communication with the media provide for the establishment of press offices. However, they run up against the lack of means of the judicial offices.

Courts, prosecutors' offices and police forces make extensive use of press releases. The publication of names in full or initials only, as well as images, gender, age, profession, is often related to the importance that the investigative bodies give to the operation. In general, however, it can be said that a high degree of arbitrariness prevails.

The channels of communication with the media are not limited to those stated, but include also and above all, the informal and often illegal communications between Public Prosecutors, Judges, Police and judicial reporters, who, in general, if well inserted, at the time of the press conference are already in possession of the measures mentioned.[13] Often, the measures passed illegally to the journalists of reference are covered by the investigative secrecy, with respect to which the Italian regulatory framework shows evident fragility. In the sentence 173/2009, the Constitutional Court itself underlined that "there is not an adequate maintenance of the secrecy of the acts kept in the judicial offices, as unfortunately, the frequent leaks of information and documents demonstrate". This is one of the major problems that emerged in the course of this research.

As previously mentioned, Art. 116 of the Code of Criminal Procedure allows access to the acts no longer covered by secrecy of investigation for anyone who has an interest in them. However, it is a rule applied in a sporadic and partial manner, with times not compatible with those of the information. The result of the ineffectiveness of this rule is that preference is given to informal channels. However, they put the journalist in a position of dependence on the judicial or police authorities, which can release news in a way that serves their own interests. The "substantial subservience" of the journalist also constitutes a brake on his independence and is critical of the judicial and police authorities.[14]

It is frequent that news that have no criminal relevance but are part of the acts of criminal

[12] ca.it/cronaca/2019/11/28/news/operazione_grande_raccordo_criminale_gdf_sgomina_banda_che_riforniva_droga_a_roma-242099895/.

[13] https://www.questionegiustizia.it/articolo/riprese-e-fotografie-di-persone-arrestate_08-01-2018.php.

[14] *Cf.* art. of Ferrarella Luigi, "Il giro della morte", https://archiviodpc.dirittopenaleuomo.org/upload/5408-ferrarelladpctrim317.pdf.

proceedings is highlighted in the media. The criterion according to which a news item is published or not is that of its public interest, evaluated autonomously by the journalist. The availability of news that is often harmful to the right to confidentiality and not criminally relevant is sometimes a consequence of their inclusion by the judicial authorities within the precautionary measures adopted, which after the arrests are no longer covered by investigative secrecy and therefore publishable. Such irrelevant elements are often transcripts of telephone tapping. These practices clearly damage the right to privacy of the persons involved, but also the cognitive virginity of the trial judge, the serenity of the trial and the presumption of innocence of the defendants.

In Italy, the press and media have a clear blameworthy tendency. A study by the "*Osservatorio sull'informazione giudiziaria dell'Unione delle Camere Penali*" is particularly eloquent in this regard.[15] Out of 7373 articles analysed, 40.2% were found guilty, 3.9% innocent, 48.9% neutral and 7.0% unclear. The analysis also covered the layout of the text of the articles. Those analyzed were classified as follows: innocent 3.2%, neutral 24.1%, reports the reconstruction of the accusation without expressing favourable judgements to the latter 32.9%, guilty 29.2%, guilty with hyperbolic language 1.3%, other 9.3%.

It is frequent that for some cases there are real parallel trials in television broadcasts or in newspapers. Sometimes the staging of several minutes of witness statements or transcripts of telephone interceptions are played by actors.

The independent guarantee and control authorities (Communications Guarantee Authority and Privacy Guarantor) have carried out clearly guaranteed provisions, implemented in the Code of Self-regulation on the representation of judicial events in television broadcasts. However, they are regularly violated without any disciplinary sanctions.[16]

[15] *Cf.* Unione delle Camere Penali Italiane (a cura di), L'informazione giudiziaria in Italia. Libro bianco sui rapporti tra mezzi di comunicazione e processo penale, Pisa, Pacini Giuridica, 2016.

[16] https://archiviodpc.dirittopenaleuomo.org/d/5714-diffamazione-e-trattamento-dei-dati-personali-nel-processo-mediatico.

5. Conclusions

The media coverage of criminal proceedings poses the problem of the conflict between different assets and interests, all of which are constitutionally guaranteed: on the one hand, the right to news and information (art. 21 of the Constitution) and the right to know how justice is handled (art. 101 of the Constitution), also in order to change the rules; on the other hand, the confidentiality, identity, image, privacy (art. 2 and 3 of the Constitution) and the presumption of innocence (art. 27 of the Constitution) of the persons involved in the proceedings. It is therefore necessary to balance the conflicting rights. In general, the first basket of rights prevails, since for everything related to criminal proceedings there is a presumption of public interest, deriving from the involvement of the sphere of personal freedom. The way such media coverage is currently carried out carries with it the risk of unjustifiably infringing individual rights. In the same way, there are risks for the serenity of the Magistrate's judgment, for the confidentiality of the investigations and for the virginity of the look of the judge of the trial, who often becomes aware of the acts relating to the investigations in the press. The interest of the press is largely concentrated in the phase of the preliminary investigations, which are often presented as the place where justice is celebrated. The accusatory hypotheses are often uncritically received by the media and perceived by the population as the outcome of a fact-finding exercise, for which the place of trial is the trial.

Although generally prevailing over the individual right to privacy, the right to news must be exercised within precise limits identified by the rules and case law. The Court of Cassation, in its judgment 5259/1984, identified three criteria whose respect is necessary for the exercise of this right to be considered legitimate: the truth of the information, the continuity of the form of the exhibition and its relevance, i.e. its public interest. More specific limits are stated in the numerous codes of ethics that regulate journalists' activities, summarized in the 2016 Consolidated Law on the Journalist's Duties. Principles and standards are of a guarantor nature. Disciplinary sanctions are provided for in case of unlawful treatment of a news item. However, there is a very great distance between rule and practice in this area. Disciplinary sanctions against journalists are very rare. Causes can be found in the persistence of corporatist dynamics, which are not exclusive to this profession.

A similar discourse can be made for the judicial and police authorities. The recent guidelines of the SCM are concerned with setting clear limits to the communication of Judges and Public Ministries, identifying in the rights mentioned above the directions to be pursued and providing for the identification of those responsible for communications with the media, as well as the creation of press offices that often do not see the light for lack of means. In addition to the guidelines, there are several regulations that go in the same direction. However, the practice is far removed from the regulatory provisions, which are most often ineffective. One example of this is the systemic inability to guarantee the secrecy of investigations to protect the acts in the PM's or GIP's file at the initial stage of criminal proceedings, as noted by the Court of Cassation (173/2009). Its violation is criminally punished but in practice those responsible are not identified. Among the cases

is undoubtedly the system's habituation to the practice of leaking information.

The ban on the distribution of images depicting persons under arrest or in the course of translation in prison, which is laid down in various regulations, is respected in very few cases by the judicial authorities themselves, as well as by the police. Sensitive data such as name, nationality, age and profession are often unjustifiably disseminated, without connection to justice or police requirements, at press conferences or in conjunction with videos published by law enforcement agencies. This is generally done at press conferences held in public prosecutor's offices but also on the premises of law enforcement agencies. Disciplinary sanctions for these violations are practically non-existent.

In contrast to law enforcement agencies, police forces have professionally managed websites and social channels. However, the contents of these websites are often self-celebratory and not infrequently respectful of the presumption of innocence and the right to privacy, insofar as sensitive data is regularly disseminated and accusatory hypotheses are often presented as truths established in court.

It is common practice to publish in the media elements that are criminally irrelevant, which often concern persons involved in criminal proceedings but not as defendants or witnesses. The criterion governing the publication of an act or the content of a procedural document is the public interest, which is assessed independently by the journalist. However, the limit of continence in reporting the news is not very often respected. The availability of such elements is often the result of the bad practice, in use among many Magistrates, of including the criminally irrelevant elements in pre-trial detention orders, however irrelevant, in order to give them media relevance.

The Code of Criminal Procedure prohibits publication in many acts. However, this prohibition is not respected in most cases. The penalties provided for are negligible. On the other hand, the provision of new criminal offences or the tightening of existing sanctions would entail a real risk of hampering the freedom of the press, as well as being contrary to well-established ECHR case law. However, disciplinary sanctions by the Order of Journalists are very rare, given the prevalence of corporate logic. The provision of effective "reputational sanctions" for journalists who violate the limits of lawfulness has been recommended by many parties.

One of the proposals put forward by an expert in the field provides for the mandatory publication of criminal convictions, civil damages sentences, disciplinary sanctions and measures of the Privacy Guarantor resulting from unlawful treatment of the news. Such pronouncements could be included on a special page to which a flashing pop-up in evidence on the media home page would be sent.[17]

Deontological failures concern all parties involved. However, it should be noted that journalists are dependent on the judicial authorities. The current legislation allows access to documents no longer covered by investigative secrecy. However, this is an ineffective rule, applied in an arbitrary and partial manner. In practice, the channels for passing on

[17] This is the proposal of Luigi Ferrarella: https://dpc-rivista-trimestrale.criminaljusticenetwork.eu/pdf/Ferrarella_Dpc_Trim_3_17.pdf.

information are informal. Leaking information is the main way in which the media become aware of criminal proceedings. The result is a structural dependence of the journalist on the judicial authority, which is often his main source.

In the Italian judicial news there is a predominantly guilty approach: a research carried out by the Criminal Chambers on a sample of more than 7000 press articles a few years ago showed that in more than 60% of the cases a guilty approach was adopted or that uncritically accepted the accusation hypothesis. This also shows how necessary it is to act on the educational and deontological front, both for information and legal operators, by breaking the corporate logic that characterizes these professions. Even without intervention that foresees the recourse to instruments of sanction of a criminal nature, changes are possible. One example is that of images of minors involved in criminal proceedings, which until a few years ago were often featured in newspapers and on television and are no longer so today.

The so-called media trials are not just about well-known personalities from the political or business world. It is also people without means who suffer from overexposure to the media. This happens mainly on a local scale. Proposals have been made for compensatory remedies for people affected by the media process, along the lines of unjust imprisonment or the unreasonable length of the trial. In the reflection of the legal operators, it has been hypothesized the taking into account of the extenuating circumstance for convicted persons, as compensation for a sort of violation of the ne bis in idem principle, which the existence of a media process would partially violate. For exonerated persons it has been hypothesized a greater strength of the reputational sanction, with an obligation to publish the sentences and monetary compensation. It seems clear that these proposals are mainly aimed at highlighting the problem, since it is unrealistic and in some ways inappropriate to implement them. But they have the merit of posing a real problem.

Finally, in recent years, the issue of the right to oblivion has been raised in jurisprudence with regard to the criminal proceedings that have been concluded. This is a problem that affects many people who have finished serving a prison sentence but for which the media echo of the conviction continues to resound for a long time because of indexing in search engines. One of the consequences is the difficulty of exercising the constitutional right to social reintegration. The Supreme Court of Cassation has identified in the time elapsed from the facts and in the topicality of the public interest in the dissemination of the news the criteria on the basis of which to establish whether the persistence of the news has reason to exist or whether it should be de-indexed.

Annex: Annotated bibliography

Country	Reference	Key words	Abstract
Italy	Ferrarella Luigi, "The "Loop-de-Loop": Criminal Justice and Mass Media, Legislation and Practice", in: " Diritto Penale Contemporaneo, 3/2017, "Criminal Justice and Journalism"	Journalism, Freedom of Press, Criminal Justice, Mass Media, Publishment of Procedural Documents, Sanctions",	The Author depicts the reality of journalism in the field of criminal justice, with particular emphasis on the factors that actually arouse media distortion of crime, by suggesting (more) effective sanctions for wrong exercise of freedom of press and by warning against the pitfalls - more or less - hidden in the Bills currently before Parliament.
Italy	Turchetti Sara, "Defamation and Processing of Personal Data in the Trial by Media", in: " Diritto Penale Contemporaneo, 3/2017, "Criminal Justice and Journalism"	Trial by Media, Defamation, Processing of Personal Data	Starting from a strict interpretation of the meaning of trial by media and from the assumption that we are in the presence of a pathology of the press in dealing with legal matters, we have tried to ascertain whether the existing legislation, both at a national and at a supranational level – specifically the criminal law on defamation and illegal processing of personal data – is sufficient in itself to set a barrier to the widespread phenomenon of trials by media. The answer to this question seems to be affermative, especially when we refer to the secondary national legislation (selfregulation codes): however, on the operational level, this

			legislation has so far met several obstacles that could be overcome if the institutions were to give proper attention to this problem.
Italy	Muscella Alessia, "Quali confini per la pubblicità delle udienze?", in "Cultura Penale e Spirito Europeo", "Archivio Penale 2017, n.2"	Public hearings, Criminal Justice, Mass Media, Publishment of Procedural Documents,	This essay aims at analysing the topic concerning the public hearing. At first, the Author makes an overview of the principle in the light of the supranational context and the legal framework provided for by domestic law, coming successively to examine the main controversial issues with reference to the abovementioned principle, highlighting both the critical aspects and the practical consequences.
Italy	Consiglio Superiore della Magistratura, "Linee-guida per l'organizzazione degli uffici giudiziari ai fini di una corretta comunicazione istituzionale"	Communication of judges with the media, Procedural documents	It is an institutional document in which the self-governing body of the Magistracy gives indications to the judicial offices of the territory on the management of communication with the mass media.
Italy	Giostra Glauco, Processo Penale e informazione, Milano, Giuffrè, 1989	Relations between the penal system and the media	The book analyzes the relationship between the information system and the criminal trial in the Italian context, both from a regulatory and practical point of view.

Italy	"Diritto all'oblio, stigma penale e cronaca giudiziaria: una memoria indimenticabile", in "Diritto Penale Contemporaneo, Fascicolo 6/2019"	Right to be forgotten	The article analyses the issue of the right to be forgotten, the protection of which is increasingly important in modern society characterised by a strong technological presence. In these terms we are talking about a new generation of law. In the face of this need, the role played by case law has been crucial. Its objective was, on the one hand, to identify an autonomous legal basis for this right and, on the other hand, to resolve the difficult balance between the right to be forgotten and certain rights that come into conflict with it (in particular the right to judicial chronicle). The right to oblivion becomes a tool to limit stigmatising effects and facilitate the resocialization and reintegration of the offender within the social context violated by his or her conduct.