

**Contribution to the Universal Periodic Review Mechanism
Seventh session of the Working Group of the Universal Periodic Review**

A submission on the Republic of Italy by *Index on Censorship*

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Introduction

Index on Censorship welcomes the opportunity provided by the Office of the High Commissioner on Human Rights to comment on the situation for freedom of expression in the Republic of Italy, with which it has been concerned for a number of years.

In comparison with other western states, the Italian media role as ‘fourth estate’ and watchdog of political authority has declined since the late 1970s and the Lockheed scandal when press exposés forced the resignation of then President Giovanni Leone.

A monolithic political structure and an established system of state influence over the broadcast media in the years that followed, cleared the way for what *Index on Censorship* believes is today’s failure to regulate a well documented conflict of interest between the media and current prime minister Silvio Berlusconi.

Prime minister Berlusconi’s political authority over public broadcasting, matched by his corporate authority over most of Italy’s major private media, gives him unprecedented governmental, political and economic control over the nation’s media.

As may be expected, it is disputed whether this control is overtly applied by himself, or via members of the ruling People of Freedom political party, or covertly through his various alleged past and present private associations, including the outlawed P2 Masonic lodge, or indeed at all. Again the advantages may or may not be applied in his interest or in the interests of his many business associates. But regardless of method or beneficiary, the heart of the problem is a system that permits conflict of interest in media management of a kind that would be untenable and illegal in any other European state.

This conflict of interest undermines freedom of expression, which requires there to be independent and pluralistic media which are able to report free from governmental, political or economic control.

The involvement of individual political figures and parties

We recognise the expectation of the Office of the High Commissioner on Human Rights that individuals and individual cases should not be at issue in submissions of this kind, but the position and activities of the prime minister of Italy are internationally accepted as emblematic of the crisis of human rights now faced by the country.

Without the kinds of safeguards that should be applied by Italy to protect freedom of expression, in line with international standards and the obligations of Italian law, the European Convention on Human Rights and the country's constitutional obligations alike, the prime minister of Italy is effectively left free to choose to use his media empire to gain support for his government while at the same time using his institutional powers to the advantage of his media business.

Index on Censorship maintains that the conflict of interest at the heart of this situation contradicts both the spirit and the letter of Italy's obligations under the national provisions of Article 21 and Article 10 of its Constitution, which require the State to guarantee freedom of expression and to conform to the generally recognised principles of international law.

Article 10 of the European Convention on Human Rights is the basic framework for media pluralism in Europe. Under its effect, Italy, has a "duty to protect" diversity of opinion in the media and, when necessary, to take positive measures to ensure it.

These positive measures should be informed by international human rights law, in particular those international legal standards and principles on the right to freedom of expression, as protected by Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which Italy ratified on 15 September 1978, and which states that "everyone has the right to freedom of expression and that this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, and regardless of frontiers".

In common with all advocates of freedom of expression rights, Index on Censorship has always strongly supported efforts by the Italian media, government and parliament to develop a national media and communication policy that promotes freedom of expression, respect for free and sustainable media and free access to information in line with internationally recognised standards.

In this context, Index on Censorship makes three specific recommendations to the Office of the High Commissioner for inclusion in its own submission to the seventh session of the Working Group of the Universal Periodic Review.

Political influence over public service media

The first article of Italy's Law No 103/1975 on public service broadcasting directs the country's public service RAI networks to serve the social and cultural development of the country according to constitutional principles, and that "independence, objectivity and openness to diverse political, cultural and social strands" are their fundamental principles.

Yet there have been several well documented examples of direct governmental, political or economic influence that overtly undermine the "independence, objectivity and openness" required of the RAI networks by law and constitutional obligation. A few recent examples are listed below.

Of institutionalisation of political influence in RAI senior management: In August 2009, the nomination to the vice-directorship of RAI 1, of the former director of the daily newspaper *Padania*, party organ of the Lega Nord, one of the ruling coalition members. Under its own rules RAI 1 may only appoint an outside candidate if it is unable to find a suitable candidate within its own ranks.

Of unreasonable challenges to RAI's independence, objectivity and openness: After RAI 3 broke ranks to cover a globally reported sex scandal involving the prime minister, he was quoted as being unable to accept that RAI should be "the only state broadcaster in the world" to criticise its own government. (In fact all other European public service broadcasters allow some measure of critical commentary on government policy as part of their own legal obligation to allow plurality of opinion.)

Of censorship of critical opinion I: The dismissal and prosecution of comedian Daniele Luttazzi after he hosted an interview with investigative journalist Marco Travaglio, author of a book documenting allegations of connections between the prime minister and members of Italian organised crime.

Of censorship of critical opinion II: In August 2009, RAI and the Mediaset networks owned by the prime minister banned the broadcast of a trailer for *Videocracy*, a documentary by Erik Gandini which tracks the effect of Berlusconi's media empire on Italian traditions, customs and ethics. In a press statement RAI management justified their decision, by saying that the documentary is critical of the government.

These incidents and others documented in detail over the last few years are evidence that Italy is failing in its duty to guarantee the independence, objectivity and openness of its public broadcasting service, with measurably negative effects on the human right of freedom of expression due to its citizenry.

Threats to media pluralism in Italy

The general theme outlined above, of use of governmental, political and economic power to silence, undermine or marginalise critical voices, repeats itself in the Prime Minister's response to independent media outside his ambit. We cite two recent cases only as illustration.

Of use of economic and political power to attempt to silence or limit critical discussion of the government and its leader: When responding to a May 2009 campaign by the daily *La Repubblica*, raising ten key questions on recent scandals, the Prime Minister alleged that the paper was guilty of subversion; their "real objective" he said "is to overthrow the PM and to install somebody else in his place". Private businesses were urged to cut advertising spending at *La Repubblica*.

This was followed by a defamation action against the paper and other publications; in response the editorial director Ezio Mauro said the prime minister is "using every method to fight against freedom of the press".¹ "This the first time in memory that a politician in a free country is filing a lawsuit because he has been asked questions."

Three leading Italian experts in media law² writing in the daily *Corriere della Sera* and republished by *La Repubblica* concluded that if the questions "suggest unwanted answers to the person to which

¹ <http://bit.ly/1cjp1e> (Italian)

² Stefano Rodotà, Franco Cordero and Gustavo Zagrebelsky. See <http://bit.ly/g5x2M> or <http://bit.ly/KXWT7> (Italian).

they are addressed, the only way to dismiss them is not to silence the questioner, but to answer him.”

They added: “The response instead is that of intimidating those who exercise the right and duty of ‘seeking, receiving and imparting information and ideas through any media and regardless of frontiers’, as stated in the 1948 Universal Declaration of Human Rights approved by the Assembly of Nations when memory was still very much alive of the way information degenerated into propaganda under the illiberal and antidemocratic regimes of the 20th century.”

The UN Human Rights Committee itself has repeatedly highlighted the importance of proportionality,³ in that the lawfulness of state restrictions on speech and the dissemination of information are subject to considerations of proportionality and necessity. It is the view of *Index on Censorship* that the aggressive actions of the Italian government against its critics are disproportionate and unnecessary as well as deliberately intimidatory and unconstitutional.

The European Court of Human Rights, among others, establishes clear and strong protection for media rights and the rights of journalists and others working in the media. Political pressure of the kind evidenced in Italy is a clear breach of the right to freedom of expression and information and contrary to international and constitutional guarantees.

By undermining the ability of journalists to perform their vital function as watchdog of as well as the public’s right to a free flow of information and ideas. The free investigation and where justified, the criticism of the actions of government, the business sector and public officials is key to the checks and balances required to sustain an open and democratic society.

Sanctions against the media must be judged against what the European Court of Human Rights calls “the pre-eminent role of the press in a State governed by the rule of law,” and the right of the public to receive information and ideas – and for politicians to receive opportunity to reflect and comment on the concerns of the public.

Of use of political power to obstruct possible economic competitors and alternative voices by manipulation of broadcast licensing systems: Specifically, the obstruction faced by Europa 7 TV, owned by Centro Europa 7 Srl., which after a properly conducted and regulated public bidding process in 1999 won a licence to broadcast nationally.

To date the company has not been allowed to exercise its fairly earned right to broadcast. Addressing Europa 7 TV’s case in 2008, the European Court of Justice ruled ⁴ that the Italian system for granting radio frequencies breached the principle of freedom to provide services and did not employ objective, transparent, non-discriminatory and proportionate selection criteria.

It also confirmed that Italian legislative changes to broadcast licensing systems “have and/or have had the effect of freezing the structures on the national market and protecting the position of operators already active in that market.”

State-owned RAI and the Mediaset group owned by the prime minister, between them control about 80-85 percent ⁵ of the Italian market for viewers and television advertising, overshadowing rivals

³ For example: Vladimir Petrovich Laptev v. Belarus, Communication 780/1997 of the Human Rights Committee.

⁴ C-380/05 Centro Europa 7 Srl v Ministero delle Comunicazioni e Autorità per le Garanzie nelle Comunicazioni and Direzione Generale Autorizzazioni e Concessioni Ministero delle Comunicazioni.

⁵ Figures vary by season, for June 2009, the latest available see <http://bit.ly/4xvN2I> (Italian).

such as Telecom Italia SpA's La7 and the satellite-based pay channels of News Corporation's Sky Italia SpA.

- **Index on Censorship recommends that the government takes steps to reassert both the lawful mandate and independence of the Commissione di Vigilanza, founded under Law No 103/1975. Specifically to ensure that RAI, when appointing managers and overseeing their conduct, especially in editorial matters, maintains the very independence, objectivity and openness of its public broadcasting services required by Law No 103/1975 itself.**
- **Index on Censorship further recommends that the Italian government recognise that employing objective, transparent, non-discriminatory and proportionate selection criteria in the allocation of broadcast licences, and compliance with the principle of freedom to provide services as outlined by the European Court of Justice, best serves the obligations of the Italian state to protect freedom of expression, respect for free and sustainable media and free access to information in line with internationally recognised standards.**
- **Finally Index on Censorship recommends that the Italian government desist from bringing defamation cases against media outlets legitimately raising questions designed to allow politicians the opportunity to reflect and comment on the concerns of the public.**

Please note: Though current circumstances have specific authors, these recommendation should stand regardless of the political make-up of the Italian government and the identity of the current Prime Minister.

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