



International  
Press  
Institute

## PRESS FREEDOM IN ITALY: BETWEEN POLITICAL INFLUENCE & CONFLICTS OF INTEREST

Report on the IPI Press Freedom Mission to Italy  
(8-12 November 2010)

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FOR THEIR CONTRIBUTIONS TO THIS REPORT, IPI WISHES TO THANK:

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## Introduction

*"In Italy there is press freedom, but the question is, what is the quality of this freedom?" - Ezio Mauro, editor-in-chief, La Repubblica*

*By Barbara Trionfi, Press Freedom Adviser, IPI*

From 8 to 12 November 2010, IPI carried out a press freedom mission to Italy. The purpose of the mission was to investigate the extent to which the fundamental rights to press freedom and access to information have been eroded after years of concentration of media ownership in the hands of Silvio Berlusconi, who since 1994 has figured prominently in Italy's political life, either as prime minister or as leader of the opposition.

The anomaly of this situation and the conflict of interest it gives rise to have been condemned by many observers, both within Italy and beyond, as a threat to the system of checks and balances that is the foundation of any democratic system, and therefore to democracy itself.

Under pressure of such criticism, the Italian government, over the past 16 years, has passed a number of laws aimed at addressing the conflict of interest issue. Critics, however, say the laws have been delayed, improperly implemented and in any case fail to address the problem fully.

On another note, this year the Italian government proposed – and Parliament discussed – the so-called “Wiretap Bill”, which included clauses greatly limiting the media's ability to investigate and report on suspected criminals and other issues of public concern. Following widespread national and international protests, the draft law was put on hold. IPI, however, considers the



government's proposed law to be an attempt to regulate the media and, as such, a notable failure to appreciate the role of a free press in a democratic society.

Prime Minister Berlusconi's repeated direct verbal attacks on the media - including a call on advertisers to boycott opposition newspapers, his demand that the public broadcaster, RAI, remove three critical journalists; and, most recently, a call on the Italian population not to read newspapers - have also raised concern.



*A statue of Walter Tobagi, a journalist with Il Corriere della Sera, who was gunned down in May 1980 by the Red Brigades, a left wing terrorist group whose activities he had criticized in his articles. (Photo. IPI)*

The IPI mission therefore sought to assess:

- The consequences of the conflict of interest on the media's ability to report independently on issues of public interest and the people's right to be informed.
- The likelihood that the draft Wiretap Bill would be passed by parliament in the near future, and the level of awareness about the serious implications that this law would have on press freedom and the people's right to be informed.
- The possibility of dealing with the perceived problems ostensibly addressed by the Wiretap Bill without undermining Italy's commitment to press freedom and freedom of information.



- The extent to which other Italian laws - including the criminal defamation law, the 'right of reply' law, and legislation aimed at regulating online activity - affect freedom of expression.
- Factors limiting the editorial independence of RAI, and ways in which proposed reforms might address such obstacles.
- The role played by the Italian Order of Journalists (Ordine dei Giornalisti) in promoting the profession, but also – as a statutory body – in limiting journalists' freedom to practice their profession.

The IPI delegation which conducted the IPI Press Freedom Mission to Italy included:

- Simon Li, IPI Vice-Chairman, former Assistant Managing Editor, *Los Angeles Times*, USA
- Alexandra Förderl-Schmid, IPI Board Member, Editor-in-Chief, *Der Standard*, Austria
- Anthony Mills, IPI Press Freedom & Communications Manager
- Barbara Trionfi, IPI Press Freedom Adviser
- Sean Salsarola, Freelance Journalist and local coordinator of the IPI Press Freedom Mission to Italy

The IPI delegation met with: high-level representatives of Italy's leading media outlets, both in the broadcasting and print sectors; representatives of Italian Prime Minister Silvio Berlusconi and Justice Minister Angelino Alfano; representatives of the political opposition; representatives of journalists' and publishers' associations, as well as press freedom and other media-related NGOs; and academics.



The vast majority of the people with whom the IPI delegation met agreed that press freedom exists in Italy. Almost all of them, however, raised concerns about what many called “the quality of Italy’s press freedom”, in reference to external interference in

media content which affects the independence of information.

“In Italy there is press freedom, but what is the quality of this freedom?” asked Ezio Mauro, editor-in-chief of *La Repubblica*, a national daily newspaper.

Similarly, Antonio Padellaro, editor-in-chief of another daily, *Il Fatto Quotidiano*, noted that “press freedom exists in Italy, but also external pressure.”

This report attempts to evaluate the elements that unduly affect media content in Italy by analysing existing laws, comparing them with international and European Union standards in the field, along with the perception of media professionals and other observers in Italy.



A statue of Maria Grazia Cutoli, a journalist with *Il Corriere della Sera* who was killed in November 2001, while covering the war in Afghanistan. (Photo. IPI)



An important consideration in any analysis of Italy's media situation is the overwhelming influence of television. Many observers told IPI that 70-75% of the Italian population cites television as its only source of information about politics. IPI has not been able to verify this statistic independently.

Two recent developments in the Italian media landscape were brought to IPI's attention as evidence of the need for independent information in a highly politicized environment:

- The recent success of the news show on the television channel LA7. Its audience share has been growing constantly in recent months and has reached an average of over 8%, occasionally exceeding 10%.

La7 is a national channel privately owned by Telecom Italia that started broadcasting in 2001. It is often referred to as "the seventh channel". (The 'six' others are: the three RAI public channels and the three channels of Mediaset, a company owned by Berlusconi.) Its news program is generally perceived as more independent than the news shows on RAI and Mediaset channels.

- The success of the recently-founded daily *Il Fatto Quotidiano*. The paper was begun in September 2009 with an ownership structure aimed at ensuring editorial independence and independence from external political and economic pressures. It now sells 75,000 copies a day at newsstands, and 40,000 through subscriptions. Its website attracts 300,000 visitors a day, editor-in-chief Padellaro told IPI.





## Country Facts



Population: 58,090,681

Literacy rate: 98%

GDP per capita: US \$ 29,900

*(Source: the website of the CIA World Factbook 2010)*

### Circulation of the biggest newspapers\*:

Il Corriere della Sera: 497,808

La Repubblica: 459,280

La Stampa: 285,348

Il Sole 24 Ore: 268,419

Il Messaggero: 193,749

Il Giornale: 190,114

### Circulation of the biggest weeklies\*:

Panorama: 382,431

L'Espresso: 331,123

*\* (Source: ADS. Timeframe: Average circulation from September 2009 to August 2010. Only newspapers and magazines reporting on politics are included)*



**Audience Share of Television News Programs:**

*(Source: Auditel. Day of measurement: 4 November 2010)*

<b>Channel</b>	<b>Time of News Bulletin</b>	<b>Number of Viewers</b>	<b>Audience Share</b>
RAI1	13:30	4.643.000	27,86%
	20:00	6.705.000	26,22%.
RAI2	13:00	2.655.000	17,38%
	20:30	2.571.000	9,34%
RAI3	19:00	2.795.000	15,17%
	-	-	-
Italia 1	12:25	2.877.000	23,55%
	18:30	1.744.000	11,77%.
Rete 4	19:00	1.119.000	6,05%
	-	-	-
La7	13:30	786.000	4,69%
	20:00	2.280.000	8,91%



## Conflicts of Interest

*“The perverse intersection between institutional power, economic power and media power has generated the greatest problems of our current democratic system.” - Stefano Corradino, Articolo 21.*

One of the areas of greatest concern to press freedom and diversity of opinion identified by the IPI Press Freedom Mission is the often-discussed issue of the conflict of interest generated by the convergence of Prime Minister Berlusconi’s government and business interests – especially those in the media.

The issue gained prominence when, as an entrepreneur and media magnate, Berlusconi founded the Forza Italia party in 1993, then won an election and became Prime Minister in 1994.

By the time Berlusconi entered politics, he already controlled Mediaset, now Italy’s biggest private entertainment company, spanning three national television channels - Canale 5, Italia 1, Rete 4 – and other entertainment businesses; Arnoldo Mondadori Editore, Italy’s biggest publishing company and the publisher of Panorama, Italy’s best-selling weekly news magazines; and *Il Giornale*, one of Italy’s top-selling dailies, which Berlusconi sold to his brother Paolo-in 1994 in a public show of resolving the conflict of interest issue. Nonetheless, *Il Giornale* remains known for its strong pro-Berlusconi slant.

Berlusconi’s business empire also covers other areas, including construction and insurance. Fininvest, a financial holding company controlled by Berlusconi's family and managed by his eldest daughter Marina, includes entities such as the insurance company,



Mediolanum; the film production company, Medusa; the football team A.C. Milan; as well as Mediaset and Mondadori.

The advertising branch of Fininvest, Publitalia 80, controls a 65% share of the television advertising market, which gives Berlusconi's television channels a major advantage.

This situation generates at least three types of conflict of interest:

- Berlusconi's political power allows him to influence political decisions that directly affect his business interests.
- Berlusconi's control over the Mediaset national broadcasting networks allows him to limit the pluralism of information and equal access to news.
- Berlusconi has, as head of government, influenced the drafting of laws in ways that appear to have favoured his own legal interests: the so-called "*ad personam*" laws.

Opposition politician Antonio Di Pietro, head of the l'Italia dei Valori political party and a former prosecutor and magistrate, told the IPI delegation that "In Italy there are many persons who today do not violate the law only because the laws have been amended." Di Pietro added that "some members of government use their political power to gain impunity and ensure that citizens are not informed."

The situation is aggravated by two elements:

- The government, through its majority in parliament, strongly influences the selection of boards and officials who control the public broadcaster, RAI.
- Berlusconi's economic power and the large percentage that his company Publitalia 80 holds of the television advertising



market has raised concerns about his ability to influence that market and, through it, the content of media.

It should be noted that the system through which the Parliament has a direct influence on the selection of RAI's directors and leading journalists predates Berlusconi; it has been in place for many decades. Berlusconi's current control of both chambers of Parliament, however, gives his party unusually broad powers to affect the selection of a majority of RAI's journalists.

Many of those who met with the IPI delegation highlighted the negative consequences of Berlusconi's perceived influence on the advertising market.

Roberto Natale, President of the Italian National Press Federation (Federazione Nazionale della Stampa Italiana – FNSI), the journalists' trade union, noted that Mediaset alone receives more advertising funds than the rest of the Italian press combined.

*La Repubblica* editor-in-chief Mauro also highlighted problems resulting from this situation and the ways in which it has affected opposition newspapers.

Mauro told IPI that at an annual meeting of young businesspeople held in Santa Margherita Ligure, Genoa, in 2009, Berlusconi urged participants to withhold advertising from media outlets which, in a period of crisis, were critical and pessimistic.

“You are well aware of the current crisis situation. We should not have an opposition and media outlets that sing all day the song of pessimism, defeatism, and catastrophes,” Berlusconi was reported as saying. “[Business people must do their part; they have to] work more in this direction. For example, you should not give advertising to those who behave in this way.”



(“La situazione della crisi è quella che conoscete. Bisognerebbe non avere un'opposizione e dei media che tutti i giorni cantano la canzone del pessimismo, del disfattismo, del catastrofismo.” “[Gli industriali devono far la loro parte, devono] operare di più in questa direzione, per esempio non date pubblicità a chi si comporta così”.)

Since 1994, when the issue of conflict of interest first became evident, successive governments have discussed ways to resolve it. However, either because of a lack of political will or the failure of Parliament to agree, the situation persists, representatives of the media and the public sector told the IPI delegation.

A handful of observers did suggest that laws in place to address the issues of pluralism in the broadcasting sector and conflict of interests - such as the 2004 Gasparri and Frattini laws - actually do fulfil their purpose.

The Gasparri Law (Law Nr. 112/2004, “Norme di principio in materia di assetto del sistema radiotelevisivo e della RAI - Radiotelevisione italiana S.p.A., nonché delega al Governo per l'emanazione del testo unico della radiotelevisione”) was drafted by Maurizio Gasparri, Communication Minister in a Berlusconi-led government at the time, after then-President Carlo Azelio Ciampi called for a law to solve the conflict of interest problem. The bill aims at ensuring pluralism in the broadcasting system; it remains one of the most discussed laws passed by Berlusconi-led governments.

The first draft of the law was passed by Parliament in December 2003, but was sent back for revision by Ciampi, who declared it unconstitutional. Ciampi stated that the system proposed by the law to calculate a 20% market share limit in the broadcasting sector could actually allow for dominant positions that would violate antitrust norms.



The Gasparri Law was eventually approved, after some revisions, in 2004. But it remains heavily criticized and many observers believe that it does not resolve the issue of media concentration in the broadcasting sector.

The European Commission brought an infringement case (procedura di infrazione No. 2005/2006) against Italy because the legal system governing the distribution of frequencies was seen to give unwarranted advantages to existing operators of analogue television and to prevent the formation of a pluralistic and free television market, according to the European Journalism Centre.

The Frattini Law (Law Nr. 215/2004, “Norme in materia di risoluzione dei conflitti d’interessi”), passed under a Berlusconi-led government in 2004, has been strongly criticized for providing penalties for conflicts of interest, but doing nothing to prevent them. In 2004, the parliamentary assembly of the Council of Europe expressed concerns that the Frattini Law, in combination with the Gasparri Law, could damage the pluralism of information.

Critics of the law take issue with the way it defines conflicts of interest. It recognises a conflict between the simultaneous managing of a company and holding public office, but not between ownership of a company and public office

Furthermore, the law states that a conflict of interest exists when a public official votes on bills that have a “specific, preferential effect on the assets of the office holder or of his spouse or relatives up to the second degree, or of companies or other undertakings controlled by them to the detriment of the public interest”. However, the need for such an effect to be “to the detriment of the public interest” makes the burden of proof very heavy.

In a 2005 analysis of the impact of the Gasparri and the Frattini laws on the Italian media situation, Miklos Haraszti, former Representative for Freedom of the Media of the Organisation for



Security and Cooperation in Europe (OSCE) noted that the Gasparri law did not really weaken the dominant positions of “the publicly owned RAI and the privately owned Mediaset [which] continue to control over 90% of all television revenues.” Haraszi further noted: “The RAI-Mediaset duopoly has deprived the Italian audiences of an effective variety of sources of information and has thereby weakened the guarantees of pluralism. It has become politically aggravated by the fact that Prime Minister Berlusconi's family holding Fininvest is a major shareholder in Mediaset.”

The report also said that the Frattini Law had not resolved the conflict of interest arising from Berlusconi's simultaneous roles as prime minister and media owner and recommended the establishment of a blind trust as the most appropriate solution.

In a meeting with the IPI delegation, Mediaset Executive Director Gina Negri acknowledged that Italy's media situation presents an “anomaly”, but also argued that a number of laws and rules address the situation.

“The Gasparri Law establishes a ceiling of 20% of programs that can be broadcast by channels owned by the same subject on a national level, and therefore it defends pluralism,” Negri said. “And the Par Condicio Law is exactly the right answer to the Italian anomaly,” she added.

The Act Nr 28 of 22 February 2000 on “par condicio” - Latin for “equal treatment” – addresses the issue of internal pluralism, elsewhere also defined as the “equal time” principle or “fairness doctrine”. In recognition of the key role played by television in influencing and shaping opinions, the law only covers that medium.

Furthermore, unlike pre-existing laws, the “par condicio” law looks at television programming throughout the year, and not only





during election campaigns, when issues of equal access to media and fairness of coverage are particularly sensitive.



*The Executive Director of the Italian Federation of Newspapers Publishers (FIEG), Alessandro Brignone (right) speaks to IPI Vice-Chairman Simon Li (left). (Photo: IPI)*

The law states that broadcasters – both public and private – must ensure that all political parties enjoy equal and fair access to television programs in which information and opinions about political issues are communicated.

The law was criticized by Berlusconi, who reportedly said that it gives equal access to all political parties

competing in elections without taking into consideration their respective levels of political representation. Berlusconi's opponents have also criticized the law for regulating only news programs and political talk shows. Critics note political positions may also be promoted through entertainment programs, and that Berlusconi, as the owner of Mediaset, has the unrivalled means to take advantage of this.

The Executive Director of the Italian Federation of Newspapers Publishers (FIEG), Alessandro Brignone, told IPI that the Gasparri Law, which prevents television networks from holding dominant positions, is already six years old, but only now have investigations into the definition of the relevant markets started. It would be very difficult to have a proof of the existence of dominant positions, he added, because “the measurement playing field has been enlarged to include many other elements.”



## **The Draft Wiretap Law and Other Laws Affecting the Media in Italy**

*"In our country, there is a well engineered misinformation system aimed at delegitimizing the information system." - Antonio Di Pietro, leader of the Opposition Party, l'Italia dei Valori*

One of the purposes of the IPI Press Freedom Mission to Italy was to look into concerns expressed by journalists and other institutions about the draft Alfano Law ("Ddl intercettazioni"), which would regulate telephone wiretapping, among other issues.

The law, also known as the Wiretap Bill, was originally proposed by Justice Minister Alfano, and adopted on 10 June 2010 in the Italian Chamber of Deputies (Lower Chamber). The Senate (Upper Chamber) modified it and sent back to the Lower Chamber for approval. Passage by both chambers is needed before it can be presented to President Giorgio Napolitano to be signed into law.

Proponents of the law say it was drafted in response to concerns about the right to privacy raised by the high number of wiretaps and the media's publicizing of the material collected from them.

Publication of transcripts from wiretaps has become a staple in the Italian press, sometimes with scant regard for the public interest. Some content is salacious: For example, the alleged recordings of a prostitute who claimed to have slept with Berlusconi dominated headlines for weeks last year.



According to figures provided by Alfano to support his proposed bill, and which were brought to IPI's attention by Mediaset representatives during a meeting in Milan, there are more than 100,000 authorised wiretaps in Italy each year. For comparison purposes, Alfano noted that 20,000 people are wiretapped every year in France, 5,500 in Great Britain and 1,700 in the United States.

Journalists have argued that the bill would hamper their ability to do investigative journalism, particularly regarding political corruption and organised crime. Magistrates – who must provide evidence that illegal activity is under way before they can obtain authorisation to order a wiretap – have said the bill would make it harder to investigate terrorism and paedophilia in particular. Judges have warned that organised crime figures may be emboldened.

The UN Special Rapporteur on Freedom of Expression, Frank La Rue, has publicly condemned the proposed law, urging the Italian government to “either abolish or revise” it and warning that “if adopted in its current form, it may undermine the enjoyment of the right to freedom of expression in Italy.” He also warned that the bill was in contravention of the International Covenant on Civil and Political Rights.

Despite the fact that the original bill has been revised, and that the penalties it envisions for various ‘offences’ have been watered down, many in the media still want the entire bill to be thrown out.

The draft bill covers four key areas of concern to the media:

### **1) Recording/filming restrictions:**

The original bill proposed fines of up to € 464,700 for anyone who records or films without the approval of the person being recorded or filmed. Individual journalists would face fines of up to € 10,000



and jail for 30 days. Prison sentences of up to four years could be given to offenders who are not accredited journalists with the National Order of Journalists.

## **2) Court reporting restrictions:**

Currently, information about investigations gained through wiretaps and from other sources may legally be published as soon as any accused party has been informed of the ongoing investigations. Under the draft Alfano Bill, journalists would be allowed to publish only summary information about the investigations; they would not be allowed to publish the transcripts of wiretaps, nor to quote from arrest warrants. Publication would have to await the end of a preliminary hearing. During a preliminary hearing, the magistrate would have to rule on what elements of the wiretap would be publishable in summary form and what other information should be barred from publication in the name of privacy rights.

Stefano Dambruoso, Director of the Office for the Coordination of International Affairs of the Ministry of Justice, said the Wiretap Bill was aimed at addressing the problem of “the use by the press and without authorisation of information reserved for investigations.”

He added: “The sanctions in place today are very mild and have not prevented the distribution of this information.”

Under the bill, journalists who publish the transcripts of wiretaps risk a fine of up to €10,000. Furthermore, they would be suspended from the profession. However, the toughest sanctions would be imposed on publishers: up to € 300,000 for publishing transcripts of wiretaps.

Numerous representatives of the Italian media spoke to IPI of the dangers of holding publishers responsible for media content.



Brignone, Executive Director of the Italian Federation of Newspaper Publishers (FIEG), expressed concern that the publishers' liability would oblige them to monitor the content of their newspapers. This goes beyond the publisher's area of responsibility, he argued.

"The wiretap bill envisages that the publisher is responsible for the content of newspapers, and this could lead to interference," Brignone told IPI.

### **3) Extension of the "obbligo di rettifica", or 'correction' obligation to all websites**

Unrelated to the wiretaps issue, the bill would also see all websites face the same 'correction' obligations that currently apply to print publications: They would be required to carry corrections or statements from those offended by information published about them within 48 hours of receiving notice or face fines of up to € 25,000. This clause would apply not only to professional online news providers, but to any "information websites". Some lawyers expressed the belief that the law could apply to bloggers and social networking websites.

The European Digital Rights Initiative (ERDI) has warned that this could discourage bloggers from writing about "economic or political issues which might bother certain personalities."

Dambruso, of the Ministry of Justice, supported the need for such a law, noting that "today there is no law that allows for complaints about information published on websites."

"On the Internet you can find information which is not correct, which is three or four years old, even if courts have actually declared that the information is not correct," he said.



#### **4) Legal registration of all bloggers**

Due to the extension of “obbligo di rettifica”, which would essentially treat online outlets in the same way as print, all online news platforms, including blogs, would need to be legally registered in the same official manner as newspapers. This would stop anonymous blogging, making litigation easier.

While almost all representatives of the media, political parties and other institutions who met with the IPI delegation generally agreed that Italian media occasionally cover matters that are not of public interest and that invade privacy, many felt that the Alfano Bill was not the right solution.

Criticizing the potential for the bill to interfere in investigations against suspected criminals, Di Pietro, who as a prosecutor became famous for the “mani pulite” (“Clean Hands”) investigations into political corruption before he entered politics, told IPI: “This bill was proposed to the Italian people as a law to protect privacy, but this is an excuse. You cannot place restrictions on investigations in order to protect privacy.”

A spokesperson for Silvio Berlusconi with whom the IPI delegation met offered another reason for the law’s necessity: It was needed to put an end to the passing of information by judges to journalists for political reasons.

Di Pietro took issue with that allegation: “It is wrong to think that information was given by the magistrates. The transcripts of wiretaps that have been authorised have to be formally recorded.” Di Pietro noted that numerous persons have access to those records, thus widening the pool of potential leakers to the media.



Giuseppe Sarcina, a senior editor with *Il Corriere della Sera* and a critic of the Alfano Bill, told IPI that 99% of the information published about ongoing court cases was in the possession of the lawyers.

Representatives of the National Federation of the Italian Press (FNSI) noted that “it is true that too often newspapers report on facts that are not socially relevant and may affect people’s dignity and even violate their privacy.” Nevertheless “if this draft law had already been passed, the people would not have been informed about prominent scandals,” FNSI Secretary Franco Siddi told IPI.

Justice Ministry adviser Dambruoso said the draft wiretap law had, at least for the time being, been shelved, as the government had other priorities.



## Limited Independence of Italy's Public Broadcaster, RAI

*"In Italy, there is a tradition of political interference in the media." - Michele Santoro, TV anchor*

The direct influence of political parties over Italy's public broadcaster was brought to the attention of the IPI delegation by many observers during the IPI Press Freedom Mission. Numerous journalists noted that the politicization of RAI was a consequence of the system of direct nomination of most of the members of RAI's executive board (Consiglio d'Amministrazione) by a parliamentary commission (Commissione parlamentare per l'indirizzo generale e la vigilanza dei servizi radiotelevisivi), whose composition reflected the distribution of power in parliament.

The third body overseeing RAI's work – in addition to the executive board and the parliamentary commission – is the Communications Authority (Autorità per le Garanzie nelle Comunicazioni - AGCpOM). This body, whose members are also nominated by Parliament in a proportional manner, is in charge of issuing broadcasting licences, protecting pluralism, protecting how the media treats minors, regulating advertising, and overseeing compliance with the right of reply.

The parliamentary commission is composed of 20 deputies and 20 senators, nominated by the presidents of the upper and lower chambers on the basis of nominations by all parliamentary groups "in order to reflect the proportional representation [of the chambers]," a 1975 law states.





This commission elects seven of the nine members of RAI's executive board. The remaining two are nominated by the Finance Ministry, which is RAI's largest shareholder.

RAI executive board members serve three-year terms.

The executive board votes on RAI's director general, who also remains in charge for a three-year term, as well as the directors of the three television channels and the chiefs of the news programs. "They nominate a total of almost 100 journalists," a member of the executive board told IPI.

While this system has been in place for many years and predates any Berlusconi government, the problem related to political influence over the content of television programs has been exacerbated by Berlusconi's position as prime minister. That role has given him the political power to influence the public broadcaster; and as the owner of Mediaset, he controls three of the four national private television channels.

This situation has given rise to much debate about the concentration of media control and possible threats to the pluralism of information and opinions on Italian television.

The extent to which the government can influence the content of RAI by interfering directly in its management's decisions was evident when an order given by Berlusconi led to the removal of three RAI journalists known for their criticism of his government.



## **The Santoro Case and the ‘Bulgaria Order’**

The case involving RAI journalist and anchorman Michele Santoro was repeatedly cited to the IPI delegation as both an example of interference by the government in the affairs of RAI, and as evidence that dissenting political opinions can still be expressed on the public broadcaster.

Santoro is a well-known journalist and anchorman and an open supporter of centre-left political ideas. In 2004 he was elected as a member of the European Parliament-as a candidate for the centre-left confederation.

Santoro’s talk shows have often attracted the anger of representatives of Berlusconi’s centre-right coalition, who have accused him of partisanship.

On 18 April 2002, during a press conference in Sofia, Bulgaria, then-Prime Minister Berlusconi attacked Santoro, as well as journalist Enzo Biagi, host of the RAI talk show “Il Fatto” and comedian Daniele Luttazzi, host of “Satyricon”.

“Santoro, Biagi and Luttazzi have made a criminal use of public television, which is paid [for] by everybody. I believe it to be a specific duty of the new RAI board not to allow this to happen again,” Berlusconi reportedly said.

All three hosts were subsequently removed from RAI. On 31 May 2002 the last episode of Santoro’s show “Sciusciá” was broadcast. Santoro charged that RAI had cancelled one of its most successful shows “in order to protect the company.” He had reportedly been offered a job in RAI’s entertainment sector, which he had refused.

Biagi’s contract as host of “Il Fatto” was expiring and was not renewed.



Santoro sued for breach of contract. In 2005, a court ruled that RAI was under the obligation to give Santoro's show a primetime slot. It ordered RAI to pay him € 1,400,000 in damages.

In 2006, after the centre-left coalition led by Romano Prodi won elections, Santoro resigned his membership of the European Parliament and started the talk show "AnnoZero" on RAI2.

Domenico D'Amati, a well-known lawyer who defended Santoro, told IPI that the Santoro case had had negative and positive aspects. On the negative side, he said, it demonstrated Berlusconi's interference in the RAI management; on the positive side, the court order to reinstate Santoro showed that "today in Italy we have a system in which it is still possible to react to violations."

### **Proposals of Reform of RAI's Governance**

The IPI delegation discussed the issue of RAI's independence with two members of RAI's executive board, Giorgio Van Straten and Angelo Maria Petroni.

Van Straten, elected to the board upon suggestion by the centre-left Partito Democratico (PD – Democratic Party), told IPI that he considered it legitimate for Parliament to define the goals of the public broadcaster, but that the management of the broadcaster had to be separate and independent from Parliament.

"RAI's board should not hold management functions, as this limits the independence of those in charge of news programs," Van Straten said.

He added: "The problem in the broadcasting sector is the fact that Berlusconi is the owner of the second biggest television network.



There is a need to adopt laws that ensure pluralism of information. [There is the need for] a real law on conflict of interest.

“The success of the news show on LA7 shows that there is strong demand for independent news, which is not satisfied by RAI.”

Many observers pointed out to IPI that while political parties have traditionally played an important role in RAI’s programming, a pluralism of ideas and opinions exists within the public broadcaster. Santoro’s talk show was repeatedly cited as an example of such pluralism.

But the RAI Board Member contested this: “The only reason why Santoro is able today to host what is the most successful political talk show on RAI is that a court ruling gave him the right to do this, not because somebody asked him to host it.

“There was a meeting at the Prime Minister’s house to decide who the directors of the news programmes on RAI should be. This is not pluralism.”

Van Straten proposed a solution to limit politicization of RAI: the creation of the position of Chief Executive Officer, chosen by a qualified majority (two third) of the executive board, with the power and responsibility to nominate the directors of RAI based on professional rather than political criteria.

But asked about the likelihood of such a reform, Van Straten said that none of the parties in Parliament had an interest in surrendering their influence over RAI.

“Opinions expressed by international organisations outside of Italy could be useful in showing Italians an alternative,” he said.

Petroni, who was nominated to the RAI board by the Finance Ministry, also stressed that it is natural for a public service broadcaster to be under the authority of Parliament. He said



Parliament's role in nominating the members of RAI's board had been specified by Italy's Constitutional Court.

Petroni argued that there was a true multiplicity of political and cultural opinions on RAI and that the broadcaster's commercial success was evidence of its quality.

"RAI is the public broadcaster with the highest audience share in Europe," Petroni said, underscoring his assertion with statistics showing that RAI had an average audience share of 44%, while Germany's ARD had 26,9%, the BBC 30,2% and France Télévisions 33,8%.

Petroni said there was a need to reform RAI's governance to make it more efficient. He said he supported a model in which RAI's management and supervision would be separated. This dual system would include a supervisory board, elected by Parliament in a way similar to the current system, but with the sole responsibility of defining RAI's objectives and supervising their attainment. In addition, he added, there should be a separate, very small management board, elected by the executive board, and including people of known professional expertise and independence.



## External Influences on Newspaper Content

*"I am very worried about the big groups that control information and have a core business which is not information itself." - Giuseppe Marra, chairperson, ADN Kronos*

Many representatives of the press and other institutions told IPI that, in the printed press, pluralism of opinion existed but independent reporting remained very rare.

Two main reasons were suggested for the lack of fully independent newspaper reporting: On the one hand, publishers in Italy were not "pure" publishers ("editori puri"), in that media was not their core business; they generally had other business interests which inevitably influenced at some level the content of their newspapers. On the other hand, Italians were strongly divided along political lines, which made independent reporting almost impossible.

"I am very worried about the big groups that control information and have a core business which is not information itself or which are backed by political parties," said IPI Member Giuseppe Marra, who is also chairman of the private news agency ADN Kronos.

Addressing the issue of newspapers taking sides on political issues, *La Repubblica* editor-in-chief Mauro told IPI: "It is the Italian political situation which is strongly radicalized." However, he played down the influence of publishers on the content of his newspaper, explaining that it was part of his own role, as editor-in-chief, to ensure a separation between content and management.

*Il Corriere della Sera* senior editor Sarcina told IPI that at his paper there was clearly pressure to take the interests of the advertisers



into consideration. “The editorial line has to balance the interests of the advertisers with editorial independence,” he said. “We try to reach a compromise without compromising on press freedom.”

Sarcina highlighted three types of external pressure on newspaper content:

- Political pressure
- Economic pressure by advertisers
- Shareholder interests

He described the political pressure as being applied by people close to the prime minister.

He noted that libel-suits were common in Italy and the cost of defending them represented an economic burden. He added, however, that in eight cases out of ten judges had ruled in favour of journalists.

While Italy still has criminal defamation laws on its books, Sarcina said that in recent years libel cases against journalists had been brought under civil rather than criminal law. Those pursuing the suits appeared to be more interested in winning financial compensation for the damage caused by allegedly defamatory journalism than seeking criminal charges, he said.

A relative newcomer to the ranks of Italian dailies is *Il Fatto Quotidiano*, which is becoming increasingly successful, due mostly to its efforts to eliminate all external pressure on its content.

*Il Fatto Quotidiano* started publishing in September 2009, after a preparatory phase online. It currently has eight shareholders and one manager. According to its charter, 70% of all its stock is owned by outsider shareholders, none of whom can own more than 16%. The remaining 30% is owed by journalists working at the paper. Decisions affecting the content of the newspaper, as well as



the appointment of the editor-in-chief, have to be taken by a majority of 70% plus one, to ensure that the journalist shareholders have a say in the newspaper's content.

“The income of the newspaper comes almost exclusively from the copies sold at the newsstand and subscriptions,” editor-in-chief Antonio Padellaro told IPI.

Padellaro explained that, by reducing costs to the minimum, the newspaper did not need to survive on advertising and so could afford to carry very little of it.

“We have tried to create something that did not exist in Italy before, and we have shown that this can be done,” he said. “We have shown that one can produce information without depending on political or economic forces.”

Italian Federation of Newspapers Publishers (FIEG) Director-General Brignone told IPI that because the Italian publishing houses generally are not “purely publishers”, being often part of companies involved in several different commercial activities, the only one person, he noted, in charge of ensuring a separation between the financial aspect and the content of newspapers is the editor-in-chief.

Nevertheless, “the newspaper industry is strong enough to ensure that there is a pluralism of information,” Brignone told IPI, adding that “24 million people read newspapers every day.”





## **The Italian Order of Journalists (Ordine dei Giornalisti) - Roles and Responsibilities**

*"The very existence of a law creating this system, of which the Order is such a major part, would in many countries be an unacceptable role for the government to play in the affairs of the media." - Simon Li, IPI Vice-Chairman and former Assistant Managing Editor, The Los Angeles Times (USA)*

The Italian Order of Journalists is a statutory body created under a 1963 law setting out the rights and duties of journalists in Italy. Article 2 of Law Nr 69/1963 states:

The Order of Journalists oversees the Journalists' Guild and their professional ethics. The organization is governed by the National Council of the Order of Journalists, its executive body. The members of the National Council are elected by journalists, who are members of the Order in each region, in a proportional manner.

The institutional duties of the National Council are:

- To hold examinations for journalists seeking to enter the profession
- To deal with legal action related to the registration and suspension of members from the guild lists, to disciplinary matters and to elections to the Council.
- To supervise respect for the ethics code and impose sanctions for violations.



The Order of Journalists has issued its own codes of ethics regarding the protection of minors, the relationship between information and advertisements, and information related to economic and financial matters.

While the right to freedom of expression allows anybody in Italy to contribute media content in a sporadic manner, journalists, who carry out their work “in an exclusive and continual manner,” - that is, anyone who makes a living regularly by practicing journalism - are obliged by law to register with the Order.

To become a member of the Order and be included in the lists of professional journalists, journalists need to prove that they have practiced the profession continuously for 18 months, or have graduated from a journalism school that includes a two-year internship. After this, journalists need to pass an examination held by the Order of Journalists in order to be accepted as members.



*Enzo Iacopino, president of the Order of Journalists, talks to the IPI delegation*

Journalists have told IPI that the working experience requirement (either in the form of 18 months of continuous journalistic work or in the form of a two-year internship) before qualifying to take the Order's examination often sets a would-be journalist on the path to political alignment. In Italy's highly-politicized media environment, journalists may develop a sense of obligation towards those

who have granted them access to such training positions.



In a meeting with Enzo Iacopino, President of the Order of Journalists, the IPI delegation expressed concerns about complaints by some Italian journalists that access to the Order is difficult, which represents an obstacle to the freedom to practice journalism.

“If it is difficult, I am glad, because the responsibility of spreading information in a country as complicated as ours is big,” Iacopino responded, stressing the Order’s role in safeguarding journalistic ethics.

IPI also expressed concerns about the make-up of the board of examiners for those aspiring to membership of the Order. The board includes four magistrates as well as ten journalists. The participation of the magistrates - officials of the state - in the examination system might appear to give the state a role in deciding who should be allowed to practice journalism full-time.

Iacopino said he saw no threat to journalistic independence in the participation of the magistrates.

“The idea that four magistrates and 10 colleagues can be influenced seems absurd to me,” he said, explaining the role of the magistrates by adding: “A part of the exam relates to laws that affect the profession of journalism.”

A journalist with *Il Corriere della Sera* noted that one of the purposes of the Order was to ensure that access to the profession was based on professional skills rather than on nepotism, as was common before the Order was created. The journalist noted that he himself, despite not having been born into a family of journalists nor having any close connection to the media, was able to become a journalist because of the Order of Journalists’ system of open competition.



IPI discussed with some of the journalists it met during the mission the advantages and limitations of an institution such as the Order of Journalists. Similar institutions exist in a very limited number of countries. IPI takes the view that they are unnecessary and may represent an obstacle to journalistic freedom. IPI also expressed the view that the ethics of journalism should be supervised by a completely independent and non-statutory institution, whose existence is governed solely by journalists. Only in this way can a truly self-regulatory system exist.

It is IPI's opinion that the very existence of a law creating a statutory regulatory system for the journalistic profession, of which the Order is such a major part, is an unacceptable form of state interference in the affairs of the media.

No matter what guarantees are in place to ensure the independence of the Order from the state, the fact that the entity empowered to define who is a professional journalist and set ethical standards for the media is established by law goes against the notion of self-regulation, which IPI considers to be the only acceptable form of media regulation.



## Challenges Facing Journalists of Migrant Background in Italy

*By Anthony Mills, IPI press freedom and communications manager, International Press Institute (IPI)*

Journalists of migrant background in Italy face a number of challenges.

One journalist of North African origin claimed that a racist discourse had made its way into mainstream media and even into the public broadcasters. He said that during political talk shows politicians were invited in to insult minorities, prompting him to ask himself: “Where is the limit?”

This, he added, was why he has founded an Internet platform to further understanding with the Arab world. Islamophobia and extremist discourse can be a problem in Italy, and the Internet, he believes, is maybe the only media form which can be used to challenge prejudiced perceptions of migrant issues right now, given the concentration of power in other media outlets.

However, noting the power of television - which observers told IPI is the primary source of information for over 70% of Italians - he said that despite efforts to promote tolerance and understanding on Internet platforms such as that which he has founded: “One [biased] programme on RAI, and it’s all destroyed.” He gave as an example a programme on immigration which he said was titled: “Us and them.” He said there appears to be no desire for programming about a multicultural society. “You have a programme dedicated to the ‘national problem’ of the face-covering ‘burqa’ for Muslim women, even though very few women in Italy wear one.”



He noted as well that at a time when anti-Muslim sentiment is high, one TV programme hosted as a guest an “aggressive Arab who no one knew, and called him a representative of Muslims in Italy.” Politicians are using immigration to increase their votes, and journalists use immigration to increase viewers and readership, he said. “Rather than document evolving relations, journalists seek to consolidate stereotypes.”

There are also, he noted, very few minorities in the Italian media. At RAI, he claimed, only four or five out of 4,000-5,000 employees are minorities.

Speaking about access to the profession from the perspective of minorities, he noted: “To become a journalist, you need to pass the journalist’s exam and you need to be an Italian, having been born here, to be able to join the Order of Journalists” – membership of which, as has been noted, is a pre-requisite for practising the profession.

Journalists who are born in Italy but are not Italian and have never worked abroad to qualify for the “foreign journalists” category of the Italian Order of Journalists cannot be in the Order, he pointed out.

They could still theoretically work, but their rights would not be protected, and under the proposed Alfano Bill, filming would be restricted to those who are members of the Order. In addition, non-members of the Order cannot have a real journalist’s contract.

Order of Journalists president Iacopino confirmed to IPI that members of the Order must be Italians. When it was suggested to him that this was discriminatory he said that they could become members of the ‘Foreign Journalists’ section of the Order – and that that they would enjoy “the same rights” in that category.



Nonetheless it would appear to IPI that to deny a person born in Italy access to the main body of the Order of Journalists on the basis that they are a foreigner is discriminatory and does little to promote integration and a sense of belonging both in general and within the media on the part of journalists of immigrant background. In addition, it was suggested to IPI that those who are in the Foreign Journalists section of the Order do not in fact enjoy the same rights, especially when it comes to union negotiations for fair salaries and working conditions.

On a related note, an Italian journalist who works on issues of media diversity said that a number of factors are constraining the development of a strong environment for Internet freedom of expression. He said the infrastructure was below that of all EU countries. He noted that the proposed law, the Alfano Bill, would put bloggers on the same legal footing as publishers. The law would also apply the right of reply within 48 hours to bloggers too.

The journalist spoke, as well, of the Pisanu Decree in 2005, which was approved as an anti-terror measure after the London underground bombings and required ID registration of all Internet users, even in Internet cafes. He noted that a few days before our visit a minister had said this would be abolished. This was confirmed by others with whom IPI spoke, including government representatives.

IPI also spoke with a representative of COSPE which has been working for 20 years on migration issues in Italy. She said that the space for media diversity is being reduced, especially in the context of the role of the media and its link to power and the fact that this is very difficult to fight against.

COSPE has been working in two directions: they have done research on diversity in mainstream media and they have expended efforts to promote dialogue within the world of journalism to promote diversification



Their research has underscored the difficulties faced by independent, alternative media in working.

“There is no sensitivity to this in parliament,” the representative said. “As soon as you raise the topic of migration in Italy, you get into existentialism and not rights.”

She, too, said that the organisation has been fighting for equal access to the Order of Journalists for migrant journalists. COSPE, this year, helped launch the Association of Migrant Journalists, which is part of the Journalists’ Union.

The COSPE representative echoed concerns about the low representation of journalists with migrant backgrounds in the Italian media.

The head of the association of journalists with migrant background told IPI: “The problem in Italy is that studying journalism is not enough to gain entry into the Order of Journalists.” She underscored the requirement to be Italian and said that journalists on the ‘Foreign Journalists’ do not enjoy union rights. “They have a separate building and are completely separate” – again hardly something that promotes interaction between journalists of migrant background who are born in Italy and others.

She also noted that journalists of migrant background have difficulty accessing positions within the media of editorial responsibility. “There is no access to editorial direction. ... For three years there was a press campaign against Roma, but no immigrant journalists were allowed access to the moulding of that tone, or the possibility to influence it positively.”

She suggested a need for foundations to pay for internships for migrant journalists in editorial offices.”





She spoke as well of a lack of interest in the journalists of migrant background association, saying “none of our colleagues ever come to our meetings.”



## Recommendations

### For the government:

- Value and uphold the right to freedom of expression, press freedom and access to information included in the Italian Constitution.
- Refrain from passing any laws that limit media's ability to investigate and report on issues of public interest, including the Wiretap Law (Decreto di Legge sulle Intercettazioni - Legge Alfano) which was recently discussed in Parliament
- Address problems related to the existence of conflicts of interest by adopting legislation that prevents individuals who own and control media companies from running for government posts
- Amend legislation related to Italy's public service broadcaster, RAI, to limit the effects of political influence on decisions related to the programming and the content of the public broadcaster.
- Remove legislation related to the Right of Reply. The Right of Reply is an important element of journalism, but it must not be regulated in a statutory manner. Self-regulatory codes of professional journalism, supervised by independent commissions, are the best way to regulate the Right of Reply.
- Remove legislation related to the licensing of journalists. Statutory licensing of journalists may lead to undue government interference in the affairs of the media. If any government is allowed to start designating who can be a journalist, it naturally follows that it will also be tempted to say who can't be one.



**For journalists and media owners:**

- Media reports must strive toward fairness and independence. Pluralism of opinions is not a substitute for fairness.
- Adopt internal statutes and mechanisms to ensure a clear separation between a media company's economic interests and decisions related to the media outlet's content.
- Develop a self-regulatory media accountability system, including an independent press council, to address public complaints related to breaches of professional ethical codes by the media.
- Ensure diversity in media reports and that the ethnic background of journalists is not an impediment to their advancement in the media.