

XIX. HATE SPEECH AND CYBERBULLYING IN ITALY

ÁLMOS UNGVÁRI

Introduction

The Constitution of the Italian Republic¹ guarantees anyone the right to freely express their thoughts in speech, writing, or any other form of communication.² This freedom is not absolute, there are several explicit and implicit limitations to the right to freedom of expression in the Italian legal system.³ However – unlike for example the Fundamental Law of Hungary – the Constitution of Italy does not contain any explicit provisions on this fundamental right that could be considered as a prohibition of hate speech. But over time, several laws have been adopted which penalize various forms of discrimination and hate speech.⁴

1. Hate Speech Regulation

The origin of the Italian regulation of discrimination and hate speech is Section XII of the Transitional and Final Provisions of the Constitution of Italy.⁵ This provision forbids the reorganization of fascist parties under any form. For a period of not more than five years from the implementation of the Constitution

1 Costituzione della Repubblica Italiana (hereinafter: Constitution of Italy).

2 Constitution of Italy Article 21 (1); Egresi, 2013, pp. 185–187.

3 Falletta, 2020, p. 149.

4 Abbondante, 2017, pp. 56–58.

5 Basile, 2019, p. 2.

of Italy, the right to vote and eligibility for the leaders responsible for the Fascist regime were temporarily limited.⁶ This prohibition was expanded by the so-called Act Scelba,⁷ which also punishes the organization and propaganda of fascist initiatives with fines and imprisonment.⁸

The first stage of the regulation of hate speech in Italy can be defined⁹ as Act No. 654 of 1975 on the proclamation of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted in New York on 21 December 1965 (hereinafter: Act 1975/654).¹⁰ In addition to the proclamation of the international convention, Act 1975/654. provided for imprisonment for the dissemination of ideas of racial superiority or hatred, incitement to national, ethnic or racial discrimination or violence against persons belonging to such groups, or the commission of violent acts. The establishment of organizations and associations with such aims, and participation in them and their activities, was also prohibited.¹¹ Act 1975/654. was amended by Act No. 122 of 1993 on urgent measures on racial, ethnic and religious discrimination,¹² also known as the Act Mancino. The modified law also penalized incitement to hatred and violence on religious grounds.¹³ It also prohibited, as a preventive measure, the display of symbols expressing discrimination or incitement to hatred on racial, ethnic or religious grounds or belonging to organizations established for such purposes.¹⁴ Thus the Act Mancino broadened the scope of discriminatory acts that are punishable. According to Italian jurisprudence, while with the adoption of Act 1975/654, the legislator aimed to give priority to the protection of public order, the main value to be protected in Act Mancino was human dignity.¹⁵ The

6 Constitution of Italy Transitional and Final Provisions Section XII.

7 Act No. 645 of 1952 on Implementing the Transitional and Final Provisions Section XII (1) of the Constitution of Italy (*Legge 20 giugno 1952, n. 645: Norme di attuazione della XII disposizione transitoria e finale (comma primo) della Costituzione*).

8 See e. g. Pulitanò, 2019, 12–17. pp.; Basile, 2019, pp. 2–3.

9 Marsocci, 2021, p. 220.; Leoni, 2016, p. 12.

10 *Legge 13 ottobre 1975, n. 654: Ratifica ed esecuzione della convenzione internazionale sull'eliminazione di tutte le forme di discriminazione razziale, aperta alla firma a New York il 7 marzo 1966* (hereinafter: Act 1975/654).

11 Act 1975/654. 3. §.

12 *Decreto-Legge 26 aprile 1993, n. 122: Misure urgenti in materia di discriminazione razziale, etnica e religiosa* (hereinafter: Act Mancino). Converted with amendments by the following act: *Legge 25 giugno 1993, n. 205: Conversione in legge, con modificazioni, del decreto-legge 26 aprile 1993, n. 122, recante misure urgenti in materia di discriminazione razziale, etnica e religiosa*.

13 Act Mancino 1. §.

14 Act Mancino 2. §.

15 Leoni, 2016, 13. p. On Act Mancino see e. g. Castellani, 2021, 7–8. pp.; Marsocci, 2021, 220. p.; Basile, 2019, 8. p.; Falletta, 2020, p. 150.

Act No. 115 of 2016¹⁶ also amended the Act 1975/654. This amendment provides for a more severe penalty, as a kind of qualified case, if the propaganda or incitement is aimed at denying or diminishing the significance of the Holocaust or relates to genocide, crimes against humanity or war crimes.¹⁷

As a final step in the legal development of the prohibition of hate speech, the provisions adopted until then were incorporated into the Italian Criminal Code¹⁸ in 2018.¹⁹ Thus, the Italian Criminal Code includes²⁰ propaganda and incitement to commit a crime based on racial, ethnic and religious discrimination²¹ among the crimes against equality.²² Under the legislation in force, anyone who disseminates ideas based on superiority, incites racial or ethnic hatred, incites discrimination on racial, ethnic, national or religious grounds or commits such a criminal offence is punishable by imprisonment or a fine. It is important to note that this is a subsidiary criminal offence, meaning that the offender can only be punished under these provisions if a more serious criminal offence has not been committed.²³ The establishment of any organisation, association, movement or group which aims to discriminate or incite violence on racial, ethnic, national or religious grounds is prohibited. Anyone who participates in or assists in such activities shall be liable to imprisonment. More serious offences are committed by those who promote or direct such organizations, associations, movements and groups.²⁴ As described above, the Italian Criminal Code specifically names and punishes hate speech related to Holocaust denial with imprisonment from two to six years.²⁵ In addition, the Italian Criminal Code provides, as a general rule, that the penalty for criminal offences punishable by imprisonment for a term other than life imprisonment is increased by half if the criminal offence is committed with discriminatory

16 Legge 16 giugno 2016, n. 115: Modifica all'articolo 3 della legge 13 ottobre 1975, n. 654, in materia di contrasto e repressione dei crimini di genocidio, crimini contro l'umanità e crimini di guerra, come definiti dagli articoli 6, 7 e 8 dello statuto della Corte penale internazionale.

17 See e. g. Pulitanò, 2015, pp. 325–332.; D'Amico, Fiano, 2021, pp. 130–131.; Rosato, 2016, pp. 280–312.

18 Codice Penale (hereinafter: Italian Criminal Code).

19 Decreto Legislativo 1 marzo 2018, n. 21: Disposizioni di attuazione del principio di delega della riserva di codice nella materia penale a norma dell'articolo 1, comma 85, lettera q), della legge 23 giugno 2017, n. 103.

20 Vallini, 2020, pp. 45–46.; D'Amico, Fiano, 2021, pp. 128–130.

21 Propaganda e istigazione a delinquere per motivi di discriminazione razziale etnica e religiosa.

22 Delitti contro l'eguaglianza.

23 Italian Criminal Code 604-bis § (1).

24 Italian Criminal Code 604-bis § (2).

25 Italian Criminal Code 604-bis § (3).

motives or in order to promote the activities of organizations, associations, movements or groups formed for the purpose of ethnic, national, racial or religious hatred or for the promotion of such hatred.²⁶

In recent years, there have been several calls to extend the criminal offence of hate speech to discrimination and incitement to hatred based on gender identity or sexual orientation. Recently, the Chamber of Deputies voted in favor of draft legislation, known as the Act Zan,²⁷ which would have amended the 604-bis and 604-ter paragraphs of the Italian Criminal Code. As a result of which, the criminal offence could have been committed in relation to gender identity and sexual orientation.²⁸ However, the crime was not amended because the Senate did not pass the amendment.

The major challenge for hate speech jurisprudence is to find the point at which an expression exceeds the constitutional freedom of expression.²⁹ In this regard, the Italian Constitutional Court³⁰ has stated in several previous decisions³¹ – prior to the codification of hate speech – that freedom of expression is not always and, in all circumstances, a fundamental right that must be unconditionally protected. It may be restricted for the purpose of enforcing other constitutional rights. According to the principles of necessity and proportionality.³² According to the case law, there must be a direct link between the speech and the action triggered. It must be intended to influence public opinion and change the mindset of the audience.³³ The latter was ruled by the Supreme Court of Cassation³⁴ in a case where the accused wrote about ritual murders committed by Jews on a website, naming Jews as satanic enemies of God and the people against whom a holy war must be waged.³⁵ There is also anti-Semitic hate speech in the condemnation of a vegetarian animal rights activist professor

26 Italian Criminal Code 604-ter § (1).

27 Disegno di legge Zan, also known as DDL Zan, from the name of the first signatory of the proposal, Member of Parliament Alessandro Zan.

28 See: Occhipinti, 2020.

29 Santerini, 2021, p. 144.

30 Corte Costituzionale.

31 For example: Decision of the Italian Constitutional Court No. 19 of 1962, Decision of the Italian Constitutional Court No. 25. of 1965, Decision of the Italian Constitutional Court No. 87. of 1966, Decision of the Italian Constitutional Court No. 100. of 1966, Decision of the Italian Constitutional Court No. 20. of 1974, Decision of the Italian Constitutional Court No. 15. of 1973, Decision of the Italian Constitutional Court No. 16. of 1973, Decision of the Italian Constitutional Court No. 133. of 1973, Decision of the Italian Constitutional Court No. 86. of 1974.

32 D'Amico, Fiano, 2021, p. 32.

33 Basile, 2019, 4. p.; D'Amico, Fiano, 2021, p. 141.

34 Suprema Corte di Cassazione.

35 Judgment of the Supreme Court of Cassation No. 37581. of 2008.

at the University of Cagliari. In his study, the slaughter of animals according to Jewish rituals was criticized, saying that it is the natural right of animals to avoid suffering. In his argument, he relativized the Holocaust, stating that Jews could not expect respect for their lives.³⁶ A much-cited Supreme Court of Cassation ruling on a racist speech by a city councilor at a city assembly is also worth mentioning. In this case, the acquittal was overturned because of the defendant's public political role and the high profile of the speech.³⁷ However, there are also a number of cases where offensive speech is protected by the court under freedom of expression. The case of the writer Oriana Fallaci is a good example. In one of her writings, she used insulting terms against Islam and its followers, calling them enemies of the Western world, without distinguishing between moderate and extremist Muslims. At the preliminary hearing, the judge ruled that it was an argument against the mass immigration of Muslims to Europe. Thus, the author had not exceeded the limits of freedom of expression. Therefore, no charges were brought in the case.³⁸ The case law on the Act Scelba, which criminalizes fascist initiatives, is very poor. The condemnations³⁹ mostly concern the use, display or publication of typically fascist symbols, such as the Roman salute or the Celtic cross, or the various commemorations.⁴⁰ There is no practice in relation to the criminal offence of hate speech constituting Holocaust denial.⁴¹ It is noteworthy that during the coronavirus pandemic, there was a significant increase in hate speech.⁴² Such as anti-Semitic opinions or offensive comments related to the attitude towards the management of the pandemic. A good example of the latter is the case of Senator Liliana Segre, whose picture documenting the administration of the coronavirus vaccine triggered a huge wave of hatred on social media.

Also, in Italy the phenomenon of online hate speech is a new emerging problem and needs to be solved as soon as possible. With the development of info communication technologies, the emergence of the Internet and in particular social media, new platforms are available for the crimes concerned. And these platforms can not only transmit but also intensify hate speech, increasing its efficiency.⁴³ The continuous evolution of technology poses a

36 Judgment of the Supreme Court of Cassation No. 20508. of 2012.

37 Judgment of the Supreme Court of Cassation No. 47894. of 2012.

38 Basile, 2019, p. 5.

39 For example: Judgment of the Supreme Court of Cassation No. 8108. 2018, Judgment of the Supreme Court of Cassation No. 11038. 2017.

40 Pulitanò, 2019, pp. 13–14.

41 Basile, 2019, pp. 10–11.

42 See e. g. Santerini, 2021, p. 155.; D'Amico, Fiano, 2021, pp. 134–135.

43 Castellani, 2021, pp. 11–12.; Ziccardi, 2021, p. 167.; Santerini, 2021, p. 143.

major challenge in terms of creating legislation that responds to the challenge of constant change. Several legislative proposals⁴⁴ have been drafted in recent years. And the Italian Charter of Rights on the Internet⁴⁵ was also adopted, which stipulates the principles on the use of the internet, the protection of human dignity, the prohibition of discrimination and freedom of expression. However, we do not find an adequate legal framework for online hate speech in the Italian legal system.⁴⁶ With regard to the liability of internet service providers for the publication or transmission of hate speech, only the Directive on electronic commerce⁴⁷ and the legislative decree⁴⁸ transposing it into national law are of some relevance.⁴⁹ The Directive on electronic commerce stipulates the liability of intermediary service providers with regard to mere conduit, caching as well as hosting.⁵⁰ For example the provider, upon obtaining actual knowledge of illegal activity or information and awareness of facts or circumstances from which the illegal activity or information is apparent, acts expeditiously to remove or to disable access to the information.⁵¹ However the Directive on electronic commerce also stipulates the absence of general obligation of the providers to monitor the information which they transmit or store and to actively seek facts or circumstances indicating illegal activity.⁵²

So, there is no real national regulation. Thus, the academic discourse from time to time raises the issue of rethinking and regulating the responsibility of the offender and the Internet service providers in relation to hate speech

44 For example: Amendments to the Criminal Code and other provisions to combat incitement to hatred and discrimination in 2018 [Modifiche al codice penale e altre disposizioni in materia di contrasto dell'istigazione all'odio e alla discriminazione (hate speech)]; Measures to counter the phenomenon of incitement to hatred on the web in 2019 (Misure per il contrasto del fenomeno dell'istigazione all'odio sul web); or the draft law on measures to prevent and combat the spread of hate speech on the internet, in 2021, which was similar to the German legislation (NetzDG) in its content and the way it combats online hate speech. See: D'Amico, Fiano, 2021, pp. 136–137.

45 Carta Italiana dei Diritti in Internet. See: Leoni, 2016, p. 15.

46 Di Tano, 2017, p. 114.

47 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (hereinafter: Directive on electronic commerce)

48 Decreto Legislativo 9 aprile 2003, n. 70: Attuazione della direttiva 2000/31/CE relativa a taluni aspetti giuridici dei servizi della società dell'informazione nel mercato interno, con particolare riferimento al commercio elettronico. (hereinafter: Legislative Decree 2003/70.)

49 Nardi, 2019, p. 275.; Castellani, 2021, pp. 17–22.; Di Tano, 2017, pp. 119–120.

50 Directive on electronic commerce Article 12–15.; Legislative Decree 2003/70. 14–17. §.

51 Directive on electronic commerce Article 14.; Legislative Decree 2003/70. 16. §.

52 Directive on electronic commerce Article 15.; Legislative Decree 2003/70. 17. §.

offences.⁵³ The responsibility of the Internet service providers is a particularly interesting issue, because also in Italy there are cases in which profiles or pages have been deleted or made inaccessible by a social media outlet that has deemed their activities discriminatory or hateful. A good example is the recent case of the Italian neo-fascist political movement Casapound, whose page and many of its members' profiles were deleted from Facebook and Instagram. The case has led to a lively public debate, as in many other countries, about whether private companies that do not exercise public authority can restrict freedom of expression through decisions such as this one. Whether these companies can quasi-censor their users in line with their own community standards and rules.⁵⁴ In the case, the Tribunal of Rome⁵⁵ ruled that Facebook was obliged to operate in accordance with constitutional principles, but its decision violated the principle of pluralism. So, the Tribunal of Rome ordered the social network to reinstate the deleted account of the political party.⁵⁶ However, the correctness of the decision was questioned.⁵⁷ As in another case, Tribunal of Siena⁵⁸ ruled that the relationship between social platform operators and users is strictly private. In doing so, the Facebook's right to deactivate pages and profiles that engage in hate speech activities violating the community standards was recognized.⁵⁹ However, the Supreme Court has stated⁶⁰ that the hosting provider is liable in cases where the unlawful content was not removed immediately. The hosting provider is also liable if it continued to publish the unlawful content even though it knew of the illegality or should have been aware of it with reasonable care. Similarly, the hosting provider is liable if it has the opportunity to take the necessary action in the knowledge that it should have done so but fails to do so.

As regards the institutions, the Observatory for Security Against Acts of Discrimination⁶¹ and the National Office Against Racial Discrimination⁶² are worth mentioning. The former is an interforce agency (Italian National Police and Carabinieri Corps) established in 2010 and set up within the Public Security Department – Central Directorate of Criminal Police. It provides qualified

⁵³ See e. g. Castellani, 2021, p. 16.

⁵⁴ See more on the topic: Falletta, 2020, pp. 150–155.

⁵⁵ Tribunale di Roma.

⁵⁶ Venanzoni, 2019.; Manna, 2020.

⁵⁷ Falletta, 2020, p. 158.

⁵⁸ Tribunale di Siena.

⁵⁹ Decision of Tribunal of Siena of 19. January 2020. See: Falletta, 2020, p. 158.

⁶⁰ Decision of the Supreme Court No. 7708. of 2019.

⁶¹ Osservatorio per la Sicurezza contro gli Atti Discriminatori.

⁶² Ufficio Nazionale Antidiscriminazioni Razziali.

support to victims of discrimination offences (hate crimes). The latter was created by the Legislative Decree⁶³ No. 215 of 2003. on implementing Directive 2000/43/EC⁶⁴ in order to monitor the effective application of the means of protection against racial or ethnic discrimination. These are the two bodies most likely to receive reports and complaints about discriminatory acts in Italy. Both bodies receive the various complaints and, if necessary, inform the police. They also liaise with victims and protection services. They assist in the procedures and monitor the progress of the case. The Senate's special committee responsible for combating intolerance, racism, anti-Semitism and incitement to hatred and violence is also worth mentioning. This committee's activities include for example the removal of such content from the Internet. In addition, several associations and rights organizations play an important role in the fight against acts of hate speech.

The lack of a legal framework, but also many other aspects raise many issues in the field of hate speech, but the solution to these is not only the transformation and supplementation of the legal environment. Of course, it would be a priority to clearly define the liability of the users and providers of social networks for illegal conduct, or the minimum address range required to commit an infringement, in order to curb online hate speech.⁶⁵ However, while appropriate sanctions can act as a deterrent, the best way to prevent hate speech in the long term is to create an environment that does not tolerate it, and education is the most important tool in this regard.⁶⁶

2. Regulation of Cyberbullying

The phenomenon of bullying (*bullismo* in Italian) and cyberbullying (*cyberbullismo* in Italian) is also a serious problem in Italy, requiring public action in many areas. Thanks mainly to the development of technology, the daily use of electronic devices and the Internet, but most of all to the emergence of social media.⁶⁷

63 Decreto Legislativo 9 luglio 2003, n. 215: Attuazione della direttiva 2000/43/CE per la parità di trattamento tra le persone indipendentemente dalla razza e dall'origine etnica.

64 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

65 Di Tano, 2017, p. 114.; Castellani, 2021, p. 11.

66 Di Tano, 2017, pp. 121–122.

67 Fierimonte, 2022.; Focaroli, 2020.; Motta, 2020a.; Grandi, 2017, 41–42. pp.; Sorrentino, Baldry, Cacace, 2018.

The Ministry of Education first addressed the issue of bullying in a 2007 directive,⁶⁸ setting out measures and general guidelines at national level to prevent and combat it successfully. The Directive defines bullying, referring to a commonly used term in international literature, as a continuous or persistent physical or verbal act that is intended to cause harm or injury to others. This interaction – which may include, for example, malicious gossip, the spreading of slander, or isolation from peers – does not merely affect one person, but by its very nature involves entire groups.⁶⁹ The phenomenon of cyberbullying is already present in this document but is even more prominent in subsequent ministerial directives with similar content (adopted in 2015,⁷⁰ 2017⁷¹ and 2021⁷²). These are essentially to ensure the continued operation of measures already underway, such as the regional centers set up by the 2007 Directive. What they all have in common is that the prevention and combating of bullying is mainly seen in the context of education, i.e. information and awareness-raising is essential.⁷³ The Ministry of Education's Safer Internet-Generazioni Connesse project, which raised awareness of the Internet and new media, is worth mentioning.⁷⁴ Mention should also be made of the self-regulatory code⁷⁵ adopted by the Ministry of Development in 2014, in which some operators and content providers of social networking services have committed to implement their own easily accessible and applicable rapid response mechanism to report activities that may constitute cyberbullying and remove harmful content. From all these measures and initiatives, the political will to take decisive action at state level against bullying and cyberbullying is evident.

The case of a fourteen-year-old girl who committed suicide in Novara, following videos posted on social media, has received national media coverage and generated a lot of publicity.⁷⁶ As a result of these and similar increasingly

68 Ministerial Directive No. 16 of 5 February 2007: General guidelines and nationwide actions to prevent and combat bullying (*Direttiva Ministeriale n. 16 del 5 febbraio 2007: Linee di indirizzo generali ed azioni a livello nazionale per la prevenzione e la lotta al bullismo*).

69 Russo, 2022.

70 Guidelines for actions to prevent and combat bullying and cyberbullying (*Linee di orientamento per azioni di prevenzione e di contrasto al bullismo e al cyberbullismo*).

71 Guidelines for preventing and combating cyberbullying (*Linee di orientamento per la prevenzione e il contrasto del cyberbullismo*).

72 Guidelines for preventing and combating cyberbullying (*Linee di orientamento per la prevenzione e il contrasto del cyberbullismo*).

73 Berlingò, 2018, pp. 1–3.; Liberali, 2015, pp. 20–22.

74 Bocchini, Montanari, 2018, pp. 349–350.

75 Self-regulatory code for preventing and combating cyberbullying (*Codice di autoregolamentazione per la prevenzione e il contrasto del cyberbullismo*)

76 Eremita, 2018, pp. 2–3.

frequent cases, the legislator has also recognized the need to protect young people as fully as possible at the legislative level,⁷⁷ and it is therefore justified to regulate the rules for combating bullying and cyberbullying at the legislative level. There have been a number of bills highlighting the importance of prevention and monitoring of this type of behavior.⁷⁸ These measures mainly consisted of the removal and inaccessibility of data that constituted offensive behavior. At institutional level, the creation of technical councils to coordinate the necessary measures and draw up an action plan, the setting up of monitoring centers and the creation of a network of schools to play a key role in victim support and awareness-raising were also considered appropriate. However, the need to involve experts and the role of the ministry in raising awareness of the use of the Internet were also mentioned in some of the draft laws.⁷⁹

Finally, after a long parliamentary debate⁸⁰ and several amendments, the Act No. 71. of 2017 on the provisions for the protection of minors to prevent and combat the phenomenon of cyberbullying⁸¹ was adopted⁸² in May 2017. The declared aim of this act was to combat all forms of cyberbullying, mainly through preventive actions, awareness-raising strategies, protection and education of minors concerned and the involvement of educational institutions. However,

77 See: Donati, 2019, pp. 63–65.

78 See e. g. Bill No. 2408. of 2014 on provisions to protect minors and prevent and combat bullying, including cyberbullying (Disposizioni a tutela dei minori per la prevenzione e il contrasto del bullismo, anche informatico); Bill No. 2435. of 2014 on provisions to prevent and combat bullying, including cyberbullying (Disposizioni per la prevenzione e il contrasto del bullismo, anche informatico); Bill No. 2534. of 2014 on the establishment of a permanent observatory against bullying, discrimination and violence (Istituzione di un Osservatorio permanente contro il bullismo, anche informativo, le discriminazioni e la violenza); Bill No. 1311. of 2014 on provisions for preventing and combating bullying and cyberbullying and the proper use of the Internet to protect minors (Disposizioni per la prevenzione e il contrasto del fenomeno del bullismo e del cyberbullismo e per la corretta utilizzazione della rete internet a tutela dei minori); Bill No. 2391. of 2010 on provisions on preventing and combating bullying in all its manifestations (Disposizioni in materia di prevenzione e di contrasto al fenomeno del bullismo in tutte le sue manifestazioni); Bill No. 1621. of 2014 on provisions for preventing and combating bullying and cyberbullying and the proper use of the Internet to protect minors (Disposizioni per la prevenzione e il contrasto del fenomeno del bullismo e del cyberbullismo e per la corretta utilizzazione della rete internet a tutela dei minori); Bill No. 1986. of 2014 on provisions for preventing and combating bullying and cyberbullying (Disposizioni per la prevenzione e il contrasto del bullismo e del bullismo informatico).

79 Liberali, 2015, pp. 22–25.

80 Eremita, 2018, p. 3.; Focaroli, 2020.

81 *Legge 29 maggio 2017, n. 71: Disposizioni a tutela dei minori per la prevenzione ed il contrasto del fenomeno del cyberbullismo.*

82 For more on the adoption of the law, see: Bocchini, Montanari, 2018, pp. 351–354.

the recently adopted Act No. 70 of 2024 on provisions and delegation of authority to the Government on the prevention and combat of bullying and cyberbullying (hereinafter: Act No. 70. of 2024)⁸³ has, among other things, extended the scope of the law to include the category of bullying.⁸⁴ Consequently, its title has also been changed to reflect this amendment: Act No. 71. of 2017 on the provisions for the protection of minors to prevent and combat the phenomenon of bullying and cyberbullying (hereinafter: Act No. 71. of 2017).⁸⁵ The Act No. 71. of 2017 now has the objective of combating all forms of bullying and cyberbullying.⁸⁶ It can still be stated that by educating and raising the awareness of the at-risk age group, the Act No. 71. of 2017 focuses on prevention and deterrence of offences instead of punishment.⁸⁷

Although the criminal law character was also stronger in other proposals and earlier drafts of the adopted law,⁸⁸ in the end, the Act No. 71. of 2017 did not include new criminal offence.⁸⁹ The measures provided by the act for victims of cyberbullying are also aimed more at remedying the harmful situation, their retaliatory nature is less relevant, and the legislator's intention to avoid criminal prosecution is evident. The most important innovation in the act is the definition of cyberbullying in the interpretative provisions. For the purposes of the Act No. 71. of 2017, cyberbullying is defined as electronic pressure, aggression, harassment, extortion, insult, defamation, slander, identity theft, alteration and manipulation, or unlawful processing of personal data, committed against minors. But it is also cyberbullying to disseminate online content about a minor's family member – or family members – with the intent and primary purpose of attacking the minor.⁹⁰ The legal definition of cyberbullying is not easy to define, as it can take many different forms and can be carried out through many different types of behavior. It may be noted that the Italian legislator did not actually undertake to do so either, but rather provided a very broad, heterogeneous list of conduct that could constitute cyberbullying. This heterogeneity also means, however, that the interpretative provision

83 *Legge 17 maggio 2024, n. 70: Disposizioni e delega al Governo in materia di prevenzione e contrasto del bullismo e del cyberbullismo* (hereinafter: Act No. 70. of 2024).

84 For more on Act No. 70. of 2024, see: Giordano, 2024.; Biffa, 2024.

85 *Legge 29 maggio 2017, n. 71: Disposizioni a tutela dei minori per la prevenzione e il contrasto dei fenomeni del bullismo e del cyberbullismo* (hereinafter: Act No. 71. of 2017).

86 Act No. 71. of 2017 l. § (1).

87 Benedetti, 2021, p. 170.; Bocchini, Montanari, 2018, p. 349.; Racca, 2018.; Ricotta, 2017.; Senor, 2017, p. 175.

88 Bocchini, Montanari, 2018, pp. 353–354.; Liberali, 2015, p. 24.

89 Colangelo, 2017, pp. 399–400.; Giordano, 2019.; Martorana, Sichi, 2021.

90 Act No. 71. of 2017 l. § (2).

treats acts of a different nature and with different perceptions together. Some conduct, such as harassment, defamation or unlawful data processing, is a criminal offence, while others are not. For this reason, some have considered the definition of cyberbullying too broad and criticised it. In addition, many also criticized the fact that, when drafting the definition of cyberbullying under Act No. 71. of 2017, the legislator ignored the internationally accepted sociological and criminological concepts and characteristics of the phenomenon, in particular the repetitive nature of the behavior causing harm.⁹¹

Also, the legislator's original decision not to include the concept of bullying in the adopted act, although it was included in some proposals and in the earlier stages of the legislative process, was widely disputed. According to some opinions, the legislator's decision was justified because the specificity of cyberbullying can cause serious harm in a loose temporal and spatial context, without physical contact and direct contact. Given the greater delimitation of bullying and the consequently less serious nature of its consequences, it was therefore acceptable to regulate the two categories in separate legislation.⁹² Others, however, considered the omission of offline bullying from the Act No. 71. of 2017 to be a serious mistake because of the close, inseparable relationship between the two concepts.⁹³ The main problem, however, is that with this omission there was still no legal definition of bullying.⁹⁴ However, the issue of regulation was so much on the agenda that since June 2020, two bills introducing the category of bullying into the Act No. 71. of 2017 have been before the Senate. Both drafts would declare the fight against bullying not only in cyberspace but also in 'traditional' bullying as the aim of Act No. 71. of 2017, and would include a definition of bullying in the interpretative provisions. However, the level of detail of the definition shows a difference between the two drafts. One draft⁹⁵ would add bullying to the current definition of cyberbullying, making

91 Benedetti, 2021, pp. 167–168; Bocchini, Montanari, 2018, pp. 354–356; Colangelo, 2017, p. 399; Motta, 2020; Rospi, 2017, pp. 465–466; Senor, 2017, pp. 175–176; Eremita, 2018, pp. 6–7.

92 Benedetti, 2021, pp. 168–169; Motta, 2020a.

93 Rospi, 2017, p. 474.

94 Motta, 2020b.

95 Bill No. 1690. on amendments to the Criminal Code Act No. 71. of 2017 and Royal Decree Law No. 1404 of 20 July 2019 converted with amendments, by Act No. 835 of 27 May 2019 on preventing and combating the phenomenon of bullying and re-educational measures for minors (*Modifiche al codice penale, alla legge 29 maggio 2017, n. 71, e al regio decreto-legge 20 luglio 1934, n. 1404, convertito, con modificazioni, dalla legge 27 maggio 1935, n. 835, in materia di prevenzione e contrasto del fenomeno del bullismo e di misure rieducative dei minori*).

the same conduct an actionable offence. However, the other draft⁹⁶ would specify in a separate paragraph that, for the purposes of the Act, bullying is aggression or harassment committed repeatedly against one or more minors by a person or a group of persons, with the purpose of causing distress or fear or isolating or excluding the victim. It also includes physical or psychological violence and pressure, incitement to suicide or self-harm, threats, blackmail, insults, and mockery, whether based on language, ethnicity, religion, gender, sexual orientation, physical appearance, disability or other personal or social characteristics. This proposal would therefore constitute a separate but similar concept in relation to the conduct listed.⁹⁷ Following the enactment of the Act No. 70. of 2024, the latter solution has been implemented. A new paragraph in the initial section of the Act No. 71. of 2017 stipulates that bullying means repeated aggression or harassment, by an individual person or group of persons, against a minor or a group of minors, suitable to provoke feelings of anxiety, fear, isolation or marginalization, through harassing acts or behavior, physical or psychological pressure or violence, incitement to suicide or self-harm, threats or blackmail, theft or damage, insult or mockery.⁹⁸

In addition the Government is delegated by the Act No. 70. of 2024 to adopt legislative decrees within 12 month in order to prevent and counteract the phenomena of bullying and cyberbullying. It is imperative that these legislative decrees guarantee, inter alia, the following: the strengthening of the service for the assistance of victims of bullying and cyberbullying through the public number “Child Emergency 114”; the biennial survey of the National Institute of Statistics on the phenomena of bullying and cyberbullying every; the initiative in relation to the implementation of awareness and preventive campaigns pertaining to the prudent utilisation of the Internet and its associated risks.⁹⁹

It is worth noting that several regions have adopted regional laws to combat all forms of bullying and cyberbullying. Including for example the regions of

96 Bill No. 1743. on amendments to Act No. 71. of 2017 and other provisions to combat the phenomenon of bullying and cyberbullying (*Modifiche alla legge 29 maggio 2017, n. 71, e altre disposizioni per il contrasto dei fenomeni del bullismo e del cyberbullismo*).

97 See more on the topic: Motta, 2020b.; Russo, 2022.

98 Act No. 71. of 2017 1. § (1-bis).

99 Act No. 70. of 2024 3. §.

Campania,¹⁰⁰ Lombardy¹⁰¹ and Piedmont.¹⁰² The provisions contained in this legislation – where offline bullying is also present, albeit only at regional level – mainly provide for the adoption of measures to prevent this phenomenon, such as campaigns, cultural or sporting events, training for teachers, and the creation of regional councils and action plans.¹⁰³

2.1. The instruments provided by the Act No. 71. of 2017 to fight cyberbullying

The Act No. 71. of 2017 provides two institutions for victims of cyberbullying, which can be used in cases of non-criminal behavior or to avoid prosecution.

A minor over the age of fourteen, the minor's parent or the person exercising parental authority may submit a request to the controller or the website or social media operator to erase, remove or block data of the minor that is disseminated on the Internet, identified by a URL, unless it constitutes prohibited processing¹⁰⁴ under the Code on the Protection of Personal Data.¹⁰⁵ Under the Code, the processing of personal data for commercial gain and to the detriment of others is punishable by imprisonment, unless a more serious offence is committed.¹⁰⁶ If, within twenty-four hours of receipt of the request, the requested controller or website operator does not declare that it will comply with the request or does not comply within forty-eight hours, or if the controller or media operator responsible cannot be identified, a complaint or a

100 Regional Act of Campania No. 11. of 2017 on provisions for preventing and combating the phenomenon of bullying and cyberbullying in the Campania Region (*Disposizioni per la prevenzione ed il contrasto dei fenomeni del bullismo e del cyberbullismo nella Regione Campania*).

101 Regional Act No. 1. of 2017 on discipline of regional interventions in preventing and combating bullying and cyberbullying (*Disciplina degli interventi regionali in materia di prevenzione e contrasto al fenomeno del bullismo e del cyberbullismo*).

102 Regional Act No. 2. of 2018 on provisions on preventing and combating the phenomenon of bullying and cyberbullying (*Disposizioni in materia di prevenzione e contrasto dei fenomeni del bullismo e del cyberbullismo*).

103 Giordano, 2019.; Rospi, 2017, pp. 474–475.

104 Trattamento illecito di dati.

105 Codice in materia di protezione dei dati personali (hereinafter: Code on the Protection of Personal Data).

106 Code on the Protection of Personal Data 167. §.

complaint may be submitted¹⁰⁷ to the Personal Data Protection Authority.¹⁰⁸ So this particular legal remedy¹⁰⁹ puts the responsibility for making harmful data or information inaccessible on the website operators.¹¹⁰ The interpretative provision of the Act No. 71. of 2017 defines website operators as all providers of Internet content on whose platform cyberbullying may occur.¹¹¹ Moreover, this generally and broadly defined concept is explicitly distinguished by the Act No. 71. of 2017 from the categories set out in the Legislative Decree 2003/70. The definition of a social media operator, which can be identified as a hosting service provider in the EU terminology, is not even specified.¹¹² For all these reasons, the definition of the website operator has been highly criticized.¹¹³ The issue of the fundamental rights conflict between the constitutional right to freedom of expression and the fight against cyberbullying has also been raised related to the removal of the offending data. It is up to the operator of the website to decide which content is illegal, for example harassment, defamation or pressure, and should be removed. In this ‘censorship’, the website operator can be neither too strict nor too permissive, as in the former case it would restrict freedom of expression and in the latter case it would not be in line with the legal policy intention to prevent cyberbullying.¹¹⁴ The time limit for the website operator to make this decision is extremely short.¹¹⁵ This short timeframe is, however, essential for effective action against cyberbullying, as the risk of harmful content spreading is increasing over time.¹¹⁶ However, under the law, in the absence of any substantive action by the data controller or website operator, it is possible to request the Personal Data Protection Authority to take action. The authority must deal with requests and complaints received within forty-eight hours of their receipt, after having established, in the course of a preliminary investigation, that the complaint or notification is well-founded and that the conditions for official action are met. Under the Code on the Protection of Personal Data, the decision of the Personal Data Protection Authority

¹⁰⁷ Act No. 71. of 2017 2. §.

¹⁰⁸ Garante per la protezione dei dati personali, also known as Garante della Privacy. It is an independent Italian administrative authority established by Act No. 675 of December 31, 1996, to ensure the protection of fundamental rights and freedoms and respect for dignity in the processing of personal data.

¹⁰⁹ Ricotta, 2017.

¹¹⁰ Gestore del sito internet.

¹¹¹ Act No. 71. of 2017 1. § (3).

¹¹² Bocchini, Montanari, 2018, pp. 356–365.; Colangelo, 2017, pp. 401–402.; Morelli, 2017.

¹¹³ Lásd például: Rospi, 2017, pp. 466–467.; Senor, 2017, p. 176.; Eremita, p. 8.

¹¹⁴ Benedetti, 2021, pp. 170–171.; Bocchini, Montanari, 2018, pp. 367–368.

¹¹⁵ Colangelo, 2017, p. 403.

¹¹⁶ Eremita, p. 10.

is subject to judicial remedy in the form of an appeal.¹¹⁷ So ultimately, a judicial forum can decide whether content posted online can be removed because it constitutes cyberbullying.

As long as no charges have been brought, Article 7 of the Act No. 71. of 2017 provides for the possibility to apply the warning procedure¹¹⁸ set out in the Decree-Law No. 11. of 23 February 2009 on urgent measures on public safety and combating sexual violence, as well as on persecutory acts (hereinafter: Decree-Law 2009/11.)¹¹⁹ in the event that a minor over the age of fourteen has committed an act of insult (Italian Criminal Code 594. §), defamation (Italian Criminal Code 595. §) or threat (Italian Criminal Code 612. §) online to the detriment of another minor. Or it is prohibited processing under the Code on the Protection of Personal Data.¹²⁰ Under the Decree-Law 2009/11., until a complaint is made under the Italian Criminal Code, the victim has the right to notify the public security authority of the facts and at the same time request that the perpetrator of the conduct be issued with a warning. Before issuing a warning, it is possible, if necessary, to ask the investigating authority for clarification or a statement of the facts. If, on this basis, the request is justified, the perpetrator of the offence complained of will be warned to comply with the law. The warning is usually verbal, but a record is made and a copy is given to the applicant and the person warned.¹²¹ The legislator's intention with regard to the applicability of the warning in the case of cyberbullying was clearly aimed at avoiding and preventing criminal proceedings.¹²² However, a number of questions have arisen in relation to the text of the legislation adopted. Thus, many were puzzled by the reference to the defamation stipulated by the Article 594 of Italian Criminal Code. This criminal offence was deleted from the Italian Criminal Code in 2016. This means that it had been out of force for more than a year at the time of the adoption of the Act No. 71. of 2017. (The provision can still be found in the current text of the Act No. 71. of 2017.) Moreover, some of these criminal offences – qualified threats and unlawful processing of data – are prosecutable *ex officio*, i.e. the

117 Code on the Protection of Personal Data 143–144. §; See more on the topic: Bocchini, Montanari, 2018, pp. 372–376.

118 Ammonimento.

119 Decreto-legge 23 febbraio 2009, n. 11: Misure urgenti in materia di sicurezza pubblica e di contrasto alla violenza sessuale, nonché in tema di atti persecutori (hereinafter: Decree-Law 2009/11.).

120 Act No. 71. of 2017 7. §. See more on the topic: Bocchini, Montanari, 2018, pp. 379–381; Colangelo, 2017, pp. 410–412; Eremita, 2018, pp. 10–12.

121 Decree-Law 2009/11. 8. §.

122 Bocchini, Montanari, 2018, p. 379.

authorities are obliged to report them, and criminal proceedings are inevitable.¹²³ Some also felt that the Act No. 71. of 2017 should refer to other provisions of the Decree-Law 2009/11. that set out the consequences of the warning. And thus to have some form of sanction.¹²⁴

Public funds that can be used to combat cyberbullying are also worth mentioning. The Act No. 71. of 2017 allocated two hundred and three thousand euros a year for three years, until 2019, from the fund for combating child pornography on the Internet and protecting information technology infrastructure of national interest¹²⁵ to finance training in schools on safe internet use and cyberbullying prevention.¹²⁶ The state has provided financial support for these and similar purposes in the past. The 2022 budget¹²⁷ provided for the creation of a permanent fund¹²⁸ to combat cyberbullying. The permanent fund, set up by a decree of the Ministry of Education, provided two million euros to amateur sports clubs, educational institutions and associations for the protection of minors for the year 2022 to finance education for minors and their prevention and awareness-raising activities.¹²⁹ The provision of the law, as well as the permanent fund, has been the subject of opinions that underestimate the amount of financial resources made available. Given the scale of the problem, which affects a large part of society, it would require more financial intervention.¹³⁰

2.2. Criminal law relevance of cyberbullying

As already mentioned, the Italian Criminal Code does not establish cyberbullying (nor bullying) as a separate criminal offence, and although it seemed so for a long time during the legislative process, the adoption of the Act No. 71.

123 Senor, 2017, pp. 176–177.; Rospi, 2017, pp. 471–473.

124 Eremita, 2018, p. 12.

125 The fund for combating child pornography on the Internet and protecting information technology infrastructure of national interest (Fondo per il contrasto della pedopornografia su internet e per la protezione delle infrastrutture informatiche di interesse nazionale) was created by the Act No. 48. of 18 March 2008 on the ratification and execution of the Council of Europe Convention on Cybercrime, done at Budapest on 23 November 23 2001, and rules for adaptation of domestic law (Legge 18 marzo 2008, n. 48: Ratifica ed esecuzione della Convenzione del Consiglio d'Europa sulla criminalità informatica, fatta a Budapest il 23 novembre 2001, e norme di adeguamento dell'ordinamento interno).

126 Act No. 71. of 2017 6. §.

127 Legge 30 dicembre 2021, n. 234: Bilancio di previsione dello Stato per l'anno finanziario 2022 e bilancio pluriennale per il triennio 2022-2024 (hereinafter: Act. No. 234. of 2021).

128 Fondo permanente per il contrasto del fenomeno del cyberbullismo.

129 Act. No. 234. of 2021 1. § (671) – (674); Russo, 2022.

130 Russo, 2022.; Senor, 2017, p. 177.

of 2017 did not change this. The question may arise as to whether it is even a legitimate expectation to create a new criminal offence. Because – as the definition of the Act No. 71. of 2017 illustrates – there are so many different types and degrees of conduct of cyberbullying that to include them in a single criminal offence would only raise problems and questions. In contrast, there are a number of criminal offences in the Italian legal system that penalize acts and conduct that are typically cyberbullying or closely related to it.¹³¹ Harassment,¹³² extortion,¹³³ defamation¹³⁴ and identity theft or manipulation,¹³⁵ as defined by law, are all criminal offences punishable by fines or imprisonment. Illegal processing is punishable under the Code on the Protection of Personal Data as described above. The paragraph on the warning procedure also refers to the criminal offence of threatening,¹³⁶ which can also be punishable by imprisonment if committed, for example, in public or anonymously. In addition, there are a number of criminal offences which, although not explicitly referred to in the Act No. 71. of 2017, are nevertheless relevant in this context.

Thus, the criminal offence of persecution,¹³⁷ created by the Decree-Law 2009/11. and incorporated into the Italian Criminal Code,¹³⁸ should be highlighted. It provides that, unless a more serious criminal offence is committed, a person who, by repeated threats or harassment, causes persistent and severe anxiety or well-founded fear for the safety of himself or a close relative, or forces him to change his way of life, shall be punished with imprisonment. The criminal offence is more serious if it is committed by a person who has an emotional relationship with the victim. It is even more serious if the victim is a minor, a disabled person or a pregnant woman. It is also a qualified case if the act of persecution is committed by means of information technology or other electronic means. Therefore, it can be concluded that with the inclusion of this provision in the Italian Criminal Code, in addition to many other forms of persecution and harassment, a type of cyberbullying, or a way of cyberbullying (the so-called cyberstalking), was given criminal relevance as a qualified case, in a

131 See: Bocchini, Montanari, 2018, pp. 347–348.; Giordano, 2019.; Motta, 2020a.; Motta, 2020b.; Racca, 2018.; Villafrate, 2022.; Eremita, 2018, pp. 4–6.; Grandi, 2017, pp. 51–53.

132 Italian Criminal Code 660. § – *Molestia o disturbo alle persone*; See e. g.: Martorana, Sichi 2022.

133 Italian Criminal Code 629. § – *Estorsione*.

134 Italian Criminal Code 595. § – *Diffamazione*; See e. g.: Panattoni, 2020, pp. 310–314.

135 Italian Criminal Code 494. § – *Sostituzione di persona*.

136 Italian Criminal Code 612. § – *Minaccia*.

137 Italian Criminal Code 612-bis § – *Atti persecutori*.

138 See: Guerini, 2012, pp. 17–20.

common provision, long before the adoption of Act No. 71. of 2017.¹³⁹ Similarly, the criminal offence of distribution of images and videos with sexual content, introduced by the Act No. 69. of 19 July 2019 on the amendments to the Criminal Code, Code of Criminal Procedure, and other provisions on the protection of victims of domestic and gender-based violence,¹⁴⁰ should be noted. Under the legislation, which penalises the phenomenon known colloquially as revenge porn, anyone who sends, transmits, distributes or publishes images or videos with sexual content without the consent of the persons concerned after they have been taken or stolen can be fined or even imprisoned.¹⁴¹ But there are also offences of coercion,¹⁴² unlawful interference with privacy¹⁴³ and assault,¹⁴⁴ which are also punishable by imprisonment. In addition to the physical injury resulting from the assault, mental illness is also a result of which the criminal offence is committed. In the most serious cases, the offence of participating in suicide¹⁴⁵ may also arise if someone persuades someone else to commit suicide, reinforces someone else's suicidal intentions or in any way helps someone else to commit suicide. The punishment is more severe if the victim is a minor or under the age of fourteen, or if the victim is mentally handicapped or intoxicated or drunk.

3. Prevention of Cyberbullying

As mentioned above, in Italy the fight against cyberbullying focuses primarily on adequate information and education, which is clearly reflected in the legislation. For members of government and educational institutions, the Act No. 71 of 2017 sets out a number of duties and obligations aimed at preventing cyberbullying. These include the integrated action plan for the prevention of cyberbullying and the guidelines issued by the Ministry of Education at regular intervals.¹⁴⁶ The Act No. 71 of 2017 requires the Minister of Education and Merit to set up a

139 See more on this topic: Crisafi, 2021.; Foligno, 2016.; Cassani, 2018, pp. 1–6.; De Simone, 2013, pp. 7–17.; Guerini, 2012, pp. 25–39.

140 *Legge 19 luglio 2019, n. 69: Modifiche al codice penale, al codice di procedura penale e altre disposizioni in materia di tutela delle vittime di violenza domestica e di genere.*

141 See more on this topic: Buffagni, 2022.; Biarella, 2019.

142 Italian Criminal Code 611. § – *Violenza o minaccia per costringere a commettere un reato.*

143 Italian Criminal Code 615-bis § – *Interferenze illecite nella vita privata.*

144 Italian Criminal Code 582. § – *Lesione personale.*

145 Italian Criminal Code 580. § – *Istigazione o aiuto al suicidio.*

146 Rospi, 2017, pp. 462–464.

technical council to combat cyberbullying (and bullying).¹⁴⁷ In addition to the ministries,¹⁴⁸ the council is made up of representatives of authorities such as the Personal Data Protection Authority, the Child and Adolescent Authority,¹⁴⁹ the Communications Guarantee Authority¹⁵⁰ and associations for the protection of minors' rights.¹⁵¹ This council draws up an integrated action plan¹⁵² to combat cyberbullying (and bullying), in line with EU directives and the self-regulatory code adopted by the Ministry of Development, under the coordination of the Ministries of Education and Higher Education and Research. The integrated action plan includes and summarizes initiatives and campaigns to inform citizens about the phenomenon, threat and prevention of cyberbullying (and bullying) or about available remedies and other means.¹⁵³ Each year, the technical council is required to report on its activities to both chambers of Parliament.¹⁵⁴

In addition, every two years the Ministry of Education must adopt a policy on preventing and combating bullying and cyberbullying.¹⁵⁵ Such or similar guidelines have been issued by the Ministry in the past, as mentioned in the previous chapter, but the Act No. 71. of 2017 has reinforced this obligation. In line with Act No. 107 of 13 July 2015 on the reform of the national education and training system and proxy for the reorganization of existing legislative provisions,¹⁵⁶ the policy of the Ministry of Education should cover, among other things, the appropriate training of school staff and the role of students and alumni in the prevention of cyberbullying (and bullying) and the necessary educational measures.¹⁵⁷ The Act No. 71 of 2017 requires all schools to adopt an internal code for the prevention and counteraction of bullying and cyberbullying in accordance with the above mentioned ministerial policy and establish a permanent monitoring table with the representatives of students, teachers, families and experts.¹⁵⁸ The schools are also required to appoint a referent from

147 Before the entry into force of the Act No. 70. of 2024 the Prime Minister was required to set up this technical council.

148 Such as the Ministry of the Interior, the Ministry of Education and Merit, the Ministry of Labour and Social Policy, the Ministry of Justice, the Ministry of Business and Made in Italy and the Ministry of Health.

149 *Autorità garante per l'infanzia e l'adolescenza*.

150 *Autorità per le Garanzie nelle Comunicazioni*.

151 2017/71. tv. 3. § (1) bekezdés; Bocchini, Montanari, 2018, p. 382.

152 *Piano di azione integrato*.

153 Act No. 71. of 2017 3. § (2)–(5).

154 Act No. 71. of 2017 3. § (6).

155 Act No. 71. of 2017 4. § (1); Motta, 2020a.

156 *Legge 13 luglio 2015, n. 107: Riforma del sistema nazionale di istruzione e formazione e delega per il riordino delle disposizioni legislative vigenti*.

157 Act No. 71. of 2017 4. § (2).

158 Act No. 71. of 2017 4. § (2-bis).

among teachers to coordinate initiatives to prevent and combat cyberbullying.¹⁵⁹ In addition, all educational institutions are obliged to educate and train pupils to be aware of their rights and obligations when using the Internet and information technologies.¹⁶⁰ It is also noteworthy that the Act No. 70 of 2024 established the institution of psychological support service for students.¹⁶¹ Under the newly adopted section of the Act No. 71. of 2017 the regions may adopt initiatives to ensure the provision of psychological support services for students at all levels of education.¹⁶²

Furthermore, the Act No. 70 of 2024 designated 20 January as the Day of Respect¹⁶³ which is also of great and symbolic importance in the prevention of cyberbullying. According to the provision of the act this day is a designated period for examining the tenets of mutual respect, fostering consciousness of the tenets of psychological and physical nonviolence, and combating all forms of discrimination.¹⁶⁴

The Ministry of Education's 2021 Guidelines for preventing and combating cyberbullying sets out the requirements for school sanctions for cyberbullying. The guideline sets out the measures that educational institutions can take to combat bullying and cyberbullying. These are divided into two groups. The assessment and monitoring of pupils at risk, the identification of harmful behaviour and appropriate training and information for both teachers and pupils are included as priority measures. Detecting bullying and cyberbullying through questionnaires, setting up a school reporting system, setting up a prevention task force and providing psychological support are among the measures advised. The guideline also outlines three levels of prevention, providing examples of actions and measures that could be taken in relation to bullying and cyberbullying. The primary or universal prevention would be to raise the awareness of the whole population, which could also be reflected in the curricula of schools. This could be achieved through compulsory reading, various discussion evenings or even events to strengthen classroom community. Secondary prevention activities should target vulnerable groups or people who have already been victims of bullying. To this end, schools should have an intervention plan in order to address the threat as early as possible, in cooperation with local professional services, teachers, parents and even students, at the earliest possible stage of bullying.

¹⁵⁹ Act No. 71. of 2017 4. § (3).

¹⁶⁰ Act No. 71. of 2017 4. § (5).

¹⁶¹ Servizio di sostegno psicologico agli student.

¹⁶² Act No. 71. of 2017 4-bis §.

¹⁶³ Giornata del rispetto.

¹⁶⁴ Act No. 70. of 2024 4. §.

Tertiary prevention measures should target groups where bullying or cyberbullying is present. A reporting system should be in place to detect acute or urgent situations. In schools, operational teams of appropriately trained persons should thoroughly investigate situations, decide on the most appropriate action to take and monitor the situation and intervention. The guideline foresees the creation of anti-bullying and emergency teams for schools. The former should be composed of the head teacher, the teacher designated as a referent, and other professionals such as a school psychologist, a specialist teacher or a health worker, while the latter would facilitate cooperation with other educational institutions or even law enforcement agencies. Both teams have the task of assisting the school principal in the prevention of bullying and cyberbullying and the implementation of intervention measures. At the end of each school year, the anti-bullying team is required to report relevant cases and their number to the regionally designated referent. The guideline is accompanied by two annexes. The first annex sets out in detail the intervention protocol to be followed by schools in dealing with acute situations, covering the behaviour to be adopted in relation to the victim, the perpetrator or group of perpetrators. The second annex contains recommendations for school staff and sets out their responsibilities.

In this context, it should be mentioned that on its official website, the Ministry of Education and Merit provides a detailed description of bullying and cyberbullying, juxtaposing the two definitions,¹⁶⁵ and that several NGOs are also carrying out similar outreach activities. Among the latter, the website *bullismo*.it provides a comprehensive and highly illustrative description of the phenomenon of bullying and cyberbullying, with specific reference to the legal and other tools available to victims.

4. Prevention and Responsibilities of Service Providers and Schools

With regard to the liability of service providers, it is worth recalling and briefly reiterating what has been written above. The Act No. 71 of 2017 gives victims of cyberbullying – or their parents – the right to have offensive content posted online removed or otherwise made inaccessible. The law obliges the website or social media operator to remove or make inaccessible the data concerned

¹⁶⁵ The Ministry of Education's briefing on bullying and cyberbullying is available: <https://www.miur.gov.it/bullismo-e-cyberbullismo>.

on the basis of a request received, if it considers the request to be justified. So, the operator of the website, which is defined by law as any provider of internet content on which cyberbullying may occur, has the right to determine whether the information or opinion posted constitutes cyberbullying. Although it is possible to request the intervention of the Personal Data Protection Authority in the event of inaction or refusal to remove the data, and the decision at the end of the procedure can be appealed in court, the primary role of the website operator is unquestionable. This solution has been highly criticized, considering that such decisions should not be left to these service providers. In addition, the definition under the Act No. 71 of 2017 is not in line with the concepts of EU legislation.

It is also important to address the issue of the responsibility of schools. According to the Act No. 71 of 2017, the school principal is obliged to notify the parents, guardians or persons exercising parental authority of the minors concerned and to take the necessary educational measures if he or she becomes aware of an act of cyberbullying that does not constitute a criminal offence.¹⁶⁶ Educational establishments are required to include in their rules¹⁶⁷ disciplinary sanctions for conduct that constitutes cyberbullying, proportionate to the seriousness of the offence.¹⁶⁸ According to the Ministry of Education's 2021 Guidelines for preventing and combating cyberbullying, these sanctions are primarily aimed at compensating for the damage caused and remedying the situation. The basic function of the sanctions is to make the offender realise the seriousness of his behaviour. The autonomy of the school is respected in the detailed development of the rules for combating bullying and cyberbullying, including the definition of sanctions. The head teacher is authorised to draw up this policy in conjunction with the teacher designated as the bullying and cyberbullying referent. These disciplinary measures must be included in the school rules approved by the school board, as well as in the responsibility agreement¹⁶⁹ signed by parents and children at enrolment, which sets out the rights and obligations of the school, parents and students. This information should also be published on the school website. Faculty members and school staff are required to report any bullying or cyberbullying incidents of which they become aware, directly or indirectly, to the principal, the referent or the bullying team and to initiate intervention. The teacher designated as the bullying referent works

¹⁶⁶ Act No. 71. of 2017 5. § (1); Berlingò, 2018, p. 11.; Rospi, 2017, p. 471.

¹⁶⁷ 4. § of Presidential Decree No. 249. of June 24 June 1998 on regulations on the status of secondary school students (*Decreto del Presidente della Repubblica 24 giugno 1998, n. 249: Regolamento recante lo statuto delle studentesse e degli studenti della scuola secondaria*, hereinafter: Presidential Decree 1998/249.).

¹⁶⁸ Act No. 71. of 2017 5. § (2).

¹⁶⁹ *Patto educativo di corresponsabilità*, see: Presidential Decree 1998/249. 5-bis §.

with the teaching staff, organises them training courses, assists the principal in developing a prevention protocol, monitors the handling of cases and liaises with the regional and district level authorities.

Many have assessed¹⁷⁰ that the provisions of the Act No. 71 of 2017 on the liability of schools are in line with the rules of the Italian Civil Code.¹⁷¹ Under the latter, teachers are liable for any damage caused by their students while under their supervision, unless they can prove that they could not have prevented the act.¹⁷² Although these rules are more relevant to the ‘traditional’ version of bullying, they fit well with the principal’s duty to notify and take action, and the duty of teachers and other staff to report, as set out in ministerial guideline.

Summary

It can be stated that the issues of hate speech and cyberbullying, as well as the measures to combat them, are both very current in Italy. Both phenomena are, and have been in recent years, the subject of constant legislative amendments and updating in line with the requirements of the times. The legal concept of bullying has recently been codified into law. In particular, the coronavirus pandemic has recently led to a significant increase in the number of such cases. In the context of the pandemic and its management, it is the polarized public discourse that has led to an increase in what can be considered hate speech. The rapid spread of the phenomenon of cyberbullying has been facilitated by the fact that, thanks to various quarantine measures, a significant part of human interaction has moved online.¹⁷³ The adoption of a law amending or supplementing the current legislation is therefore expected in relation to both phenomena. For example the criminalization of hate speech based on gender identity or sexual orientation. The issue of the responsibility of social media and online service providers in relation to hate speech is even more of an issue to be addressed. It is interesting to note that while in the case of cyberbullying the role of website operators is clearly defined by the Act No. 71 of 2017, in the case of hate speech only the relevant EU directive can be invoked, with several solutions being found

170 Benedetti, 2021, 171–172. pp.; Bocchini, Montanari, 2018, p. 348.

171 *Codice civile* (hereinafter: Italian Civil Code).

172 Italian Civil Code 2048. §.

173 See: Santerini, 2021, 155. p.; D’Amico, Fiano, 2021. pp. 134–135; Racca 2018; Cardinale, 2020.

in the case law of the EU courts. At the same time, both phenomena repeatedly raise the issue of the restriction of the right to freedom of expression.

It can therefore be concluded that, although the legal regulation of hate speech and, in particular, cyberbullying in Italy is noteworthy and commendable, there is still work to be done by the legislator.

Bibliography

- Abbondante, F. (2017) 'Il ruolo dei social network nella lotta all'hate speech: un'analisi comparata fra l'esperienza statunitense e quella europea' *Informatica e diritto*, 26(1-2), pp. 41-68
- Basile, F. (2019) 'Ti odio, "in nome di Dio". L'incriminazione dell'odio e della discriminazione (in particolare, per motivi religiosi) nella legislazione italiana', *Diritto Penale e Uomo*, 2019/12, pp. 1-13
- Benedetti, A. M. (2021) 'Minori "buoni" e minori "cattivi" nella nuova disciplina sul cyberbullismo', in Bianca, M. (ed.) *The best interest of the child*. Rome: Sapienza Università Editrice. pp. 165-177
- Berlingò, V. (2018) 'Le politiche pubbliche di contrasto e prevenzione del (bullismo e del) cyberbullismo nell'ordinamento italiano: art. 31, comma 2, Cost. e "servizio scolastico di periferia"', *Forum di Quaderni Costituzionali*, 2018/3, pp. 1-17.
- Biarella, L. (2019) *Codice Rosso: definizione, procedura, nuovi reati e aggravanti* [Online]. Available at: <https://www.altalex.com/documents/leggi/2019/07/26/codice-rosso#tre>
- Biffa, M. (2024) *La nuova legge per la prevenzione ed il contrasto del bullismo e del cyberbullismo* [Online]. Available at: <https://www.dippol.it/la-nuova-legge-per-la-prevenzione-ed-il-contrasto-del-bullismo-e-del-cyberbullismo/>
- Bocchini, R., Montanari, M. (2018) 'Le nuove disposizioni a tutela dei minori per la prevenzione ed il contrasto del fenomeno del cyberbullismo', *Nuove leggi civili commentate*, 2018/2, pp. 340-384
- Buffagni, E. (2022) *L'intimità digitale e le sue violazioni: il revenge porn* [Online]. Available at: <https://www.altalex.com/documents/news/2022/02/10/intimita-digitale-e-le-sue-violazioni-revenge-porn>
- Cardinale, R. L. (2020) *Il cyberbullismo ai tempi del coronavirus* [Online]. Available at: <https://www.altalex.com/documents/news/2020/12/30/cyberbullismo-ai-tempi-del-coronavirus>
- Cassani, C. (2018) 'Atti persecutori e recenti modifiche normative: spunti di riflessione', *Archivio penale*, 2018/1, pp. 1-13
- Castellani, L. (2021) *E-hate speech e funzione dell'Internet Service Provider*, Verona: Università di Verona: Osservatorio Cybercrime. pp. 1-26
- Colangelo, R. M. (2017) 'La legge sul cyberbullismo. Considerazioni informatico-giuridiche e comparatistiche', *Informatica e diritto*, 26(1-2), pp. 397-418
- Crisafi, M. (2021) *Il reato di Stalking o atti persecutori* [Online]. Available at: <https://www.studiocataldi.it/articoli/12949-il-reato-di-stalking.asp>
- D'Amico, M., Fiano, N. (2021) 'La Costituzione non odia: sui limiti costituzionali ai discorsi di odio', in D'Amico, M., Brambilla, M., Crestani, V., Fiano N.

- (eds.) *Il linguaggio dell'odio. Fra memoria e attualità*. Milan: Franco Angeli. pp. 125–141
- De Simone, G. (2013) 'Il delitto di atti persecutori (la struttura oggettiva della fattispecie)', *Archivio penale*, 2013/3, pp. 1–52
- Di Tano, F. (2017) 'Prospettive de iure condendo sulla responsabilizzazione dei content provider' *Informatica e diritto*, 26 (1–2) pp. 113–126
- Donati, F. (2019) 'La tutela dei minori nella direttiva 2018/1808', 2019/1, *MediaLaws – Rivista di diritto dei media*, pp. 60–72
- Egresi, K. (2013) *Az olasz alkotmány*. Budapest: Gondolat Kiadó.
- Eremita, A. R. (2018) 'Tutela del minore e cyberbullismo: Note a prima lettura della L. 71/2017', *La Nuova Procedura Civile*, 2018/3, pp. 1–14
- Falletta, P. (2020) 'Controlli e responsabilità dei social network sui discorsi d'odio online', *MediaLaws – Rivista di diritto dei media*, 2020/1, pp. 146–158
- Fierimonte, E. (2022) *Cyberbullismo e social network* [Online]. Available at: <https://www.studiocataldi.it/articoli/44203-cyberbullismo-e-social-network.asp#par5>
- Focaroli, R. (2020) *Legge contro il cyberbullismo: una speranza rimasta tale* [Online]. Available at: <https://www.studiocataldi.it/articoli/40554-legge-contro-il-cyberbullismo-una-speranza-rimasta-tale.asp>
- Foligno, E. (2016) *Le prove dello stalking* [Online]. Available at: <https://www.studiocataldi.it/articoli/19706-stalking-aspetti-psicologici-e-prove.asp>
- Giordano, A. (2019) *Cyberbullismo: profili normativi e giurisprudenziali* [Online]. Available at: <https://www.studiocataldi.it/articoli/33438-cyberbullismo-profil-normativi-e-giurisprudenziali.asp#par2>
- Giordano, A. (2024) *Bullismo e cyberbullismo: cosa prevede la legge 70/2024* [Online]. Available at: <https://www.studiocataldi.it/articoli/46838-bullismo-e-cyberbullismo-cosa-prevede-la-legge-702024.asp>
- Grandi, C. (2017) 'Le conseguenze penalistiche delle condotte di cyberbullismo. Un'analisi de jure condito', *Annali online della Didattica e della Formazione Docente*, 9(13), 40–58. pp.
- Guerini, T. (2012) 'Il delitto di atti persecutori. Tra carenza di determinatezza e marketing penale', *Studi e materiali di diritto penale*, 5(2), pp. 17–46
- Leoni, A. (2016) *L'evoluzione del contrasto all'hate speech tra online ed offline*. Rome: LUISS Guido Carli
- Liberati, B. (2015) 'L'educazione e la prospettiva del "rispetto dei generi" quale strumento per contrastare la violenza e il bullismo', *Osservatorio Costituzionale*, 2015/3, pp. 1–30
- Manna, M. (2020) *Facebook vs. CasaPound: the deactivation of CasaPound's page and account is unlawful* [Online]. Available at: <https://www.martinimanna>

- com/blog/facebook-vs-casapound-the-deactivation-of-casapounds-page-and-account-is-unlawful
- Marsocci, P. (2021) 'Discorsi d'odio online e tutela costituzionale dei minori' in Bianca, M. (ed.) *The best interest of the child*. Rome: Sapienza Università Editrice, pp. 215–230
- Martorana, M., Sichi, Z. (2021) Cyberbullismo: cosa succede se mio figlio ne è vittima? Quali tutele? [Online]. Available at: <https://www.altalex.com/documents/news/2021/03/30/cyberbullismo-cosa-succede-se-mio-figlio-ne-e-vittima-quali-tutele>
- Martorana, M., Sichi, Z. (2022) Il Metaverso e il reato di molestie sessuali nella realtà virtuale [Online]. Available at: <https://www.altalex.com/documents/news/2022/02/23/il-metaverso-e-il-reato-di-molestie-sessuali-nella-realta-virtuale>
- Morelli, C. (2017) Cyberbullismo: provider fuori dal raggio d'azione della legge [Online]. Available at: <https://www.altalex.com/documents/news/2017/05/23/cyberbullismo>
- Motta, M. B. (2020a) Cyberbullismo: la guida completa [Online]. Available at: <https://www.altalex.com/guide/cyberbullismo>
- Motta, M. B. (2020b) Il bullismo [Online]. Available at: <https://www.altalex.com/guide/bullismo>
- Nardi, V. (2019) 'I discorsi d'odio nell'era digitale: Quale ruolo per l'internet service' *Diritto Penale Contemporaneo*, 2019/2, pp. 268–288
- Occhipinti, S. (2020) Legge sull'omotransfobia: il testo approvato alla Camera [Online]. Available at: <https://www.altalex.com/documents/leggi/2020/11/05/legge-sull-omotransfobia-il-testo-approvato-alla-camera>
- Panattoni, B (2020) 'I riflessi penali del perdurare nel tempo dei contenuti illeciti nel cyberspace', *Sistema Penale*, 2020/5, pp. 303–324
- Pulitanò, D. (2015) 'Di fronte al negazionismo e al discorso d'odio', *Diritto Penale Contemporaneo*, 2015/4, pp. 325–332
- Pulitanò, D. (2019) 'Legge penale, fascismo, pensiero ostile', *MediaLaws – Rivista di diritto dei media*, 2019/1, pp. 12–24
- Racca, A. (2018) Previsioni di contrasto ai fenomeni di cyber-bullismo nella L. 71/2017 [Online]. Available at: <https://www.dirittopenaleglobalizzazione.it/previsioni-contrasto-ai-fenomeni-cyber-bullismo-nella-l-712017-gazz-uff-n-127-del-03062017/>
- Ricotta, F. (2017) Cyberbullismo: riflessioni critiche sulla nuova legge [Online]. Available at: <https://www.altalex.com/documents/news/2016/10/12/cyber-bullismo>
- Rosato, A. S. S. (2016) 'Osservazioni critiche sul nuovo "reato" di negazionismo', *Diritto Penale Contemporaneo*, 2016/3. pp. 280–312

- Rospi, M. (2017) 'Social media, minori e cyberbullismo: lo status quo della legislazione nazionale ed eurounitaria', *Informatica e diritto*, 26(1-2), pp. 453-482
- Russo, P. (2022) Un Fondo per combattere il cyberbullismo nella Legge di Bilancio [Online]. Available at: <https://www.altalex.com/documents/2022/01/05/un-fondo-per-combattere-il-cyberbullismo-nella-legge-di-bilancio>
- Santerini, M. (2021) 'Pregiudizio antisemita e propaganda online', in D'Amico, M., Brambilla, M., Crestani, V., Fiano N. (eds.) *Il linguaggio dell'odio. Fra memoria e attualità*. Milan: Franco Angeli, pp. 143-158.
- Senor, M. A. (2017) 'Un primo commento alla legge sul cyberbullismo', *MediaLaws – Rivista di diritto dei media*, 2017/1, pp. 174 – 177
- Sorrentino, A., Baldry, A. C., Cacace, S. (2018) 'Cyberbullying in Italy', in Baldry, A. C., Blaya, C., (eds.) *International Perspectives on Cyberbullying. Prevalence, Risk Factors and Interventions*. London: Palgrave Macmillan, pp. 231-249
- Vallini, A. (2020) 'Criminalizzare l'hate speech', *Studi sulla questione criminale*, 15(1), pp. 33-64
- Venanzoni, A. (2019) Pluralismo politico e valore di spazio di dibattito pubblico della piattaforma social Facebook: la vicenda Casapound [Online]. Available at: <https://dirittodiinternet.it/pluralismo-politico-valore-spazio-dibattito-pubblico-della-piattaforma-social-facebook-la-vicenda-casapound-tribunale-civile-roma-sezione-specializzata-materia-dimpresa-ord/>
- Villafrate, A. (2022) Il cyberbullismo [Online]. Available at: <https://www.studiocataldi.it/articoli/32450-cyberbullismo.asp>
- Ziccardi, G. (2021) 'Le espressioni d'odio sulle piattaforme digitali: alcune considerazioni informatico-giuridiche', in D'Amico, M., Brambilla, M., Crestani, V., Fiano N. (eds.) *Il linguaggio dell'odio. Fra memoria e attualità*. Milan: Franco Angeli, pp. 159-182