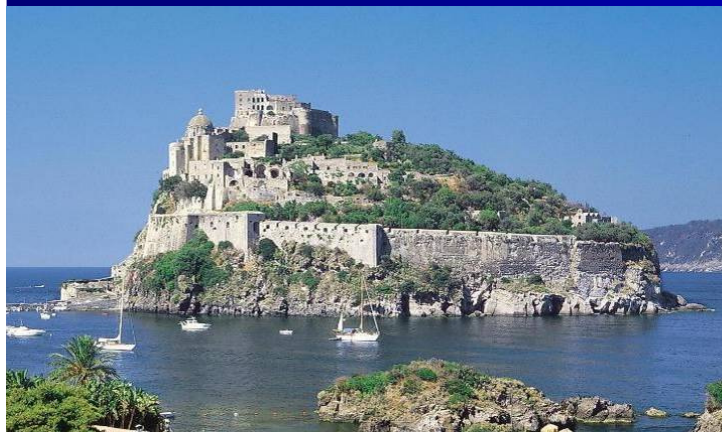


# THE ITERATE MEDIA' TENACITY TOWARDS DOCTORS: THE CRIME OF STALKING AND THE USUAL LEGAL GUARDIANSHIP

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## USUAL JUDICIAL REMEDIES

- The **Doctor** is often the target of unjustified **criticism from the media** that, under the pretext of the right to report, report false news, **harming the dignity and honour** both of the man and the professional.
- Italian law provides for **four consolidated legal remedies** to secure the honour, the professionalism, the identity and the privacy of the Medic: **two in civil law** and **two in criminal one**.

## CIVIL LAW

- Everyone has the right to see respected, in societies in which he lives and works, his image to participate in social life, with its acquisitions of ideas and experiences with his ideological, moral, social, and professional beliefs ( the right to identity ).
- The **news that change** (both in a pejorative sense and in an improved one) **the Doctor's personality allows him to seek an injunction preventing the detrimental behaviour** or the cessation of harmful behaviour and the subsequent damages.

## LEGAL ACTIONS



### Formal notice via bailiff:

Request by an application addressed to the newspaper, the publishing house or the management of TV, radio or internet site of termination of the failure, otherwise the start of judicial proceedings.



Appeal filed in Court, in a matter of urgency (action under art. 700 c.p.c.), to obtain an injunction restraining the harmful behavior.

In any case...



In civil law an **ordinary cause** is proposable for the **compensation of damages** which are determined by the judge in equitativa street

## CRIMINAL LAW

A piece of news seriously prejudicial of the personality or the dignity of the Doctor happens if:

- the told **facts** are **not truthful**;
  - the **public interest doesn't subsist** to the knowledge of the news (violation of privacy or confidentiality);
  - there is no continence in exposure (offensive or **insulting terms**).
- In such cases there is a crime punishable by:



**Formal notice** addressed to the director of the media with a request for correction of false news (ex art. 8 l. 08.02.48 N°. 47).  
In the absence of grinding fine imposed by the magistrate on complaint lodged by the Medic



**Lawsuit filed by the Doctor for libel** (ex art. 595 cp) with criminal conviction for the author of the news and the director responsible of the mean of information

## STALKING (art. 612 bis c.p.): GREATER CHANCE OF PROTECTING

*"Unless the act constitutes a more serious crime, is punished with imprisonment from six months to four years anyone threatens someone with a repeated harassing behaviour in such a way as to cause a serious and continuing state of anxiety or fear, or cause the fear for physical injury [...] or by forcing himself to alter their habits of life. "*

(art. 612 bis c.p. introduced by D.L. 23.02.09 n °11)

The art. 612 bis c.p.



**now** allows everyone to punish acts which alone are not considered illegal, but repeated over time, create psychological problems to the harassed subject or forced him to change his daily habits.

In Italy the wording of the article enables **high enforceability of the behaviour**: it's possible to punish any kind of repeated acts which cause psychological or mental disorders.

## PRACTICAL APPLICATIONS

- In addition to the known applications of the article in question (for ex. harassment among former partners, disputes between apartments's owners in condominium or between work colleagues), it is certainly possible to punish the journalist who repeatedly publish news that, though not defamatory, affects the personality or the professionalism of the Doctor.
- A very frequent case, first unpunished, respect the journalist who, without using offensive terms or false allegations, often reports in newspapers, various publications, TV or websites news that damages to the professionalism of the Doctor.
- The Doctor, upon complaint, may obtain:
  - a criminal conviction against the perpetrator injuriousj ournalist;
  - the cessation of disturbing facts.

## COMPARISON PROSECUTION

Warnings, action under art. 700 cpc or suit for libel (art. 595 cp)

1. Every judicial initiative punishes only one event
2. The sentence is permissible only when the news is not true or it's exposed with offensive or insulting terms

Lawsuit for stalking (art. 612 c.p)

1. Single judicial initiative punishes more events at different times
2. The conviction is admissible if the facts, even if true, have the sole purpose of harming the injured person and create him disturbance in the mood

## CONCLUSIONS

With the introduction of art. 612 *bis* c.p.:

- less initiatives to promote by the damaged Doctor,
- more acts punishable with a single action,
- more severe penalties for the perpetrators of publications affecting the personality or the professionalism of the Medic

## THE BIRTH OF THE LEGISLATION ON STALKING AND THE WORLD DEVELOPMENT

### UNITED STATES OF AMERICA AND CANADA

1993: it was approved a law that defines stalking a crime

### UNITED KINGDOM

1997: entered into force The Protection from Harrasment Act to protect criminally the victims of harassment

### AUSTRALIA AND NEW ZEALAND

1997: it was introduced the criminal law on stalking.

### BELGIUM

1999: entered into force the "*belagingswet*" to suppress criminally sexual and psychological assaults

### HOLLAND

2001: it was introduced the "*wetbelaging*" to protect victims of harassment (not yet issued judgments)

### GERMANY

2006: it was introduced art. 238 of the criminal code ( "*nachstellung*") to suppress harassing acts

### SWITZERLAND

2007: it was introduced the art. 28b of c.c. sanctioning, but only in civil law, the harasser who is moved away with an order of protection of the judge

## CLOSING REMARKS

The legislation is recent and it's different in every country where it's in force.

Therefore it's necessary to await the evolution of law cases to check the multiple, but different, applications of rules in each country.

# THANK YOU !