

DECLARATION CONCERNING RECENT GOVERNMENT INITIATIVES IN THE FIELD OF JUSTICE IN ITALY

The Council of Administration of MEDEL, gathered in Bucharest on June 21st, 2008, having learned that new legislative proposals are being discussed by the Italian Parliament related to:

1. severe limitation to the power of lawfully ordering wiretapping in the course of a criminal investigation, and introduction of severe criminal penalties for journalists who publish any act or content of an act pertaining to a criminal investigation;
2. the suspension of criminal trials relating to all crimes committed up until June 30th 2002, except for those punished by imprisonment for 10 years or longer; this would lead to the suspension of particularly relevant proceedings, such as those concerning the incidents during the G8 gathering of 2001 in Genoa, as well as a trial at the Court of Milan concerning a case of corruption allegedly committed by the present Prime Minister;
3. the suspension of all criminal trials and investigations pending against the highest officials of the State (President of the Republic, Presidents of the two Chambers of Parliament and Prime Minister) for the duration of their mandate;

OBSERVES THE FOLLOWING

1). - MEDEL is aware of the need to protect the right to privacy and the presumption of innocence of persons involved in criminal investigations, and is therefore convinced that episodes of abuse by public authorities and press organs through undue publication of materials obtained during an investigation must be punished.

At the same time, the answer to the problem does not lie in the drastic limitation of the Judiciary's powers of investigation, also considering the enhancing, throughout Western Democracies, of the powers of Police and Intelligence services to gather, retain and employ communication data outside of judicial control.

We must also stress that the exclusion of public information on criminal investigations affects the necessary democratic control over the exercise of the judiciary's power and the right of the public to be promptly informed of all relevant circumstances concerning public life and its protagonists in the fields of politics, finance, public management and institutions.

We recall that Recommendation REC (2003)13 of the Committee of Ministers of the Council of Europe stresses "*the importance of media reporting in informing the public in criminal proceedings, making the deterrent function of criminal law visible, as well as ensuring the public scrutiny of the functioning of the criminal justice system*".

In the words of the Recommendation, "*the right to freedom of expression and information guaranteed by art. 10 of the Convention for the Protection of Human Rights constitutes one of the essential foundations of a democratic society*".

This right must be balanced and limited in view of the respect of other fundamental rights, but cannot be suppressed.

2). - Concerning the two proposals on suspension of trials and investigations, these would have the effect of excluding judicial control over extremely relevant facts ascribed to public officials, also committed in the exercise of their duties.

MEDEL respects to their full extent the prerogatives of Government and Legislative power concerning the administration of Justice and the Laws governing it.

At the same time, it is deeply concerned by initiatives that result in a breach of the principle of equality of all citizens before the Law and in an undue limitation of the accountability of those who hold public office.

A correct implementation of the separation of powers requires that no branch of the State interfere in the lawful exercise of the prerogatives of another.

3). – **We strongly condemn these policies through which Italy risks to break away from the consolidated European democratic values and to undermine the foundations of cooperation based on mutual trust. We will continue to scrutinize closely the developments in the Italian situation.**

Bucharest, June 21st, 2008

the President
Vito Monetti

This Declaration has been approved unanimously by the judges and prosecutors sitting in representation of the following Associations members of MEDEL: Association syndicale des Magistrats, Belgium; Cyprus Judges Association, Cyprus; Soudeovska Unie České Republiky, Czech Republic; Unie statnich zastupcu Ceske republiky, Czech Republic; Syndicat de la Magistrature, France; Neue Richtervereinigung, Germany; Vereinigte Dienstleistungsgewerkschaft VER.DI (Fachausschuss Richter und Staatsanwälte), Germany; Eteria Elinon Dikastikon Litourgon gia ti Demokratia ke tis Elefteries, Greece; Magistratura democratica, Italy; Movimento per la Giustizia, Italy; Iustitia, Poland; Polish public prosecutors association, Poland ; Associação Sindical dos Juizes Portugueses, Portugal; Sindicato dos Magistrados do Ministerio Público, Portugal; Uniunea Nationala a Judecatorilor din România, Romania; Judges' Association of Serbia; Jueces para la democracia, Spain. ; Union progresista de fiscalens, Spain.

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