



Can I lie about the facts before the State Courts?

Cecilia Carrara

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Common vs. Civil law

Common law

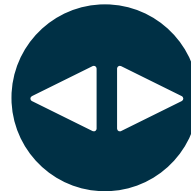
Adversarial model

Seeks the truth by pitting the parties against each other, but the judge has no duty to ascertain the truth

Civil law

Inquisitorial model

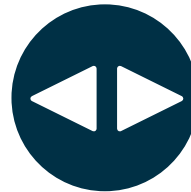
The role of the judge is to investigate the case and to establish the facts and the law



Common vs. Civil law

Common law

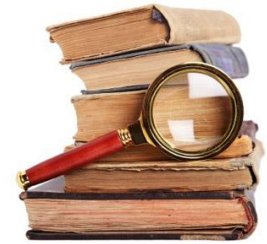
The main goal of the lawyers is the search for the factual truth. The parties shall present all the relevant evidence, including adverse evidence.



Civil law

The parties are not required to present all the relevant evidence - they can determine which evidence they wish to rely on.

Historical background



Summa Theologica, St. Thomas Aquinas, IIa IIae, q. 71, article 3

OF INJUSTICE IN JUDGMENT ON THE PART OF COUNSEL

"[...] it is lawful for a soldier, or a general to lay ambushes in a just war, by prudently concealing what he has a mind to do, but not by means of fraudulent falsehoods, since we should keep faith even with a foe [...]. Hence it is lawful for an advocate, in defending his case, prudently to conceal whatever might hinder its happy issue, but it is unlawful for him to employ any kind of falsehood".

- A similar distinction between actively using false information and omitting to reveal unfavourable facts to one's client was contained in the "Corpus Iuris", at the basis of canon law.

Legislative framework - Italy

Burden of proof

Article 2697 – Italian Civil Code

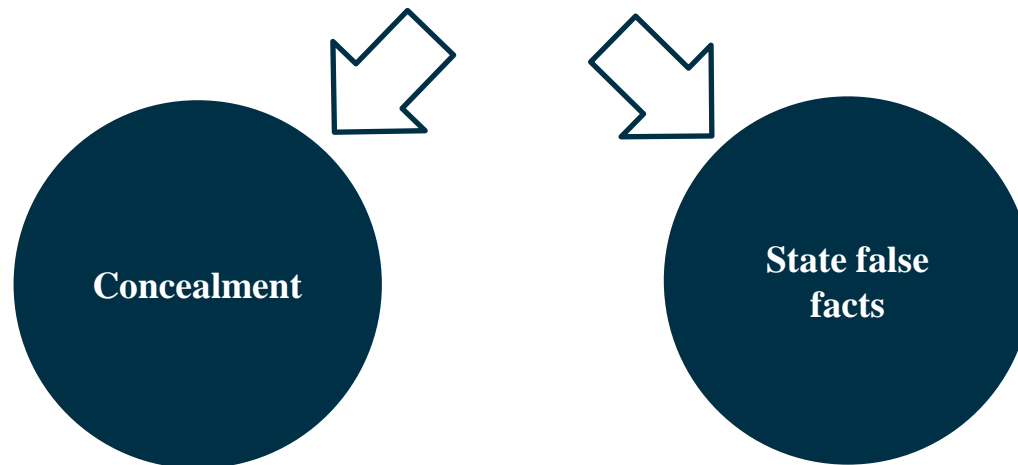
"One who asserts a right in judicial proceedings must prove the facts on which the right is based. One who asserts the invalidity of such facts, or claims that the right has been modified or extinguished, must prove the facts on which the defence is based".

Legislative framework - Italy

Burden of proof

Article 2697 – Italian Civil Code

- Each party has the burden of proving the facts relied on to support its claim or defence.
- The counterparty has no duty to collaborate in providing such evidence.



Legislative framework - Italy

Duty to duty of fair and honest behavior

Article 88 - Code of Civil Procedure

"The parties and their lawyers have a duty to behave in court according to the principles of fairness and honesty. In case of a lawyer's violation of this duty, the judge shall report to the competent authorities having disciplinary powers".

Code of Conduct - Europe



False or Misleading Information

Code of Conduct for European Lawyers of the Council of Bars
and Law Societies of Europe

Section 4.4

"A lawyer shall never knowingly give false or misleading information to the court".

Code of Conduct - Italy

Professional activity abroad and foreign lawyers' activity in Italy

Article 3

1. During the exercise of their profession abroad, Italian lawyers shall respect the rules of the Italian Code of Conduct, as well as the ethical rules of the country where they are exercising their profession.
2. In case of contrast between the two regulations, the rules of the hosting country prevail, provided that they are not in conflict with the public interest to a correct exercise of the professional activity.
3. In exercising their profession in Italy, foreign lawyers shall comply with the Italian Code of Conduct.

Code of Conduct - Italy

Duty to act truthfully

General Principle

A lawyer has the duty to protect the interests of the client, but the individual interests should not compete with the collective duty to contribute to a correct administration of justice.

Code of Conduct - Italy

Duty to act truthfully - Article 50

1. A lawyer shall not file evidence, elements of proof or documents which she/he knows to be false.
2. A lawyer shall not refer to evidence or documents, filed or provided by the assisted party, which she/he knows to be false.
3. A lawyer, who becomes aware, even at a later stage, about the filing of false evidence, elements of proof or documents provided by the assisted party, may not use them or shall resign the appointment.
4. A lawyer shall never give her/his word to a judge on the truth of facts disclosed during judicial proceedings.
5. Declarations made by a lawyer in judicial proceedings regarding the existence or non-existence of objective facts which are directly known to her/him and which represent a specific element for the judge's decision must be true.
6. In filing petitions or requests concerning the same factual situation, a lawyer shall mention the decisions that are already obtained, including the decisions of rejection.
7. The breach of sub-sections 1, 2, 3, 4 and 5 shall result in a suspension from the exercise of the legal profession from one to three years as disciplinary sanction. The breach of subsection 6 shall result in a warning as disciplinary sanction.

Code of Conduct - Italy

Duty to act truthfully

False evidence/facts

- Usually the lawyer has knowledge of the facts on the basis of the information provided by the client and he is not obliged to assess the correctness and truth of the client's documents and statements.
- The lawyer has no duty to question the client's representation of the facts.
- Only in case of clear inconsistencies and incompatibility with other evidence, the lawyer has a duty to inform the client about the discrepancies.

Code of Conduct - Italy

Duty to act truthfully

False evidence/facts

A lawyer has the duty not

- to file evidence or
- state facts

which he knows to be false.

Code of Conduct - Italy

Duty to act truthfully

False evidence/facts

- If there are serious grounds to suspect that the client lies on the facts, the lawyer should resign the appointment or agree on a different strategy with the client.
- Criminal liability: Procedural fraud - Article 374 of the Italian Criminal Code.

Code of Conduct - Italy

Duty to act truthfully

False evidence/facts

"A lawyer who knows that certain facts are not true and who nevertheless blames the counterparty, in order to obtain an advantage for his clients, for crimes based on such facts, breaches the principles of fairness and honesty."

Italian Bar Council's decision no. 192/2000

Code of Conduct - Italy

Duty to act truthfully

False evidence/facts

"If a lawyer submits, in connection with a traffic accident that is discussed in two different proceedings, two different versions of the facts and does not communicate that the first dispute has been settled, she/he is in breach of Article 14 of the Code of Conduct."*

Italian Bar Council's decision no. 121/2006

*Regulating the duty to act truthfully in the previous version of the Italian Code of Conduct.

Code of Conduct - Italy

Duty to act truthfully

Court order

A lawyer has the duty to tell the truth in referring facts that are personally known to him to the Court and that could be used as a ground for the adoption of a Court order.

Code of Conduct - Italy

Duty to act truthfully

New request

A lawyer has the duty to act truthfully in requesting the Court to issue an order with reference to the same facts on which the Court already adopted an interim measure or rejected the relevant request.

Code of Conduct - Italy

Summary - Obligation to tell the truth

Based on the legal framework, an Italian lawyer has an obligation to tell the truth in the following cases:

- If reason and content of a requested court order depend only on the facts stated by the applying party.
 - *E.g.*, if the lawyer requests the stay of proceedings due to the death of a party
- If a party requests an *ex parte* order (absence of the possibility for the counterparty to explain its view of the facts).
- If a party requests an order with regard to the same facts that have already been subject-matter of previous orders or decisions.

THANK YOU!

Cecilia Carrara

@ ccarrara@legance.it

MILANO - 20123
Via Dante, 7
T +39 02 89 63 071

ROMA - 00187
Via di San Nicola da Tolentino, 67
T +39 06 93 18 271

LONDRA - EC4N 1TX
10 -15 Queen Street
Aldermay House
T +44 (0)20 7074 2211

info@legance.it
www.legance.it

Legance
AVVOCATI ASSOCIATI