# Italy, Court of Cassation (Terza Sezione Civile, Ordinanza 26 giugno – 5 novembre 2018 n. 28084)

## Deciding bodies and decisions

Italy, Court of Cassation (Terza Sezione Civile, Ordinanza 26 giugno – 5 novembre 2018 n. 28084)

## Area of law

Data protection - right to be forgotten

## Subject matter

Data protection - Right to be forgotten

## Summary Facts Of The Case

Twenty-seven years after the incident, in 2009 the newespaper Unione Sarda republished a case of homicide for which the convicted person had already served his sentence of 12 years imprisonment. Thus this person complained to the Court of Cagliari damage to property and moral, as well as to the image and reputation suffered for the new media crap to which he had been exposed.

Cited jointly for compensation, the newspaper Unione Sarda and the journalist reacted contesting the claim by virtue of the fact that the article in question was part of a weekly column dedicated to the most important events that occurred in Cagliari in the last 30/40 years and the republishing of the fact was of public interest. Both the Court of Cagliari and the Court of Appeals in second instance rejected the applicant's request.

The person has appealed to the Supreme Court against the sentence, denouncing the violation and misapplication of Article 2 of the Constitution in the part in which the Court of merit considered Article 21 of the Constitution incompatible and always prevailing over individual rights - guaranteed from article 2 - including the right to be forgotten; furthermore, he maintains that the historical material fact of republication (accompanied by a photo and a complete indication of its generality) of an article that had already been published back in 1982 is profoundly detrimental to the rights guaranteed by the aforementioned article of our constitutional charter .

The Court then proceeded with the analysis of the legal and jurisprudential framework, of the internal and supranational order, in the matter of balancing the right to inform individuals - placed at the service of the public interest in information - and the right to be forgotten – set forth to protect the privacy of the person.

The information right, according to the unanimous teaching of the jurisprudence of Cassazione, is a subjective public right, to be understood in the broader one concerning the free expression of

thought and the press. However, it can not be considered without limits.

The Supreme Court resumed the judgement n. 5259 of 18/10/1984 of the First Section, in which it was affirmed that the right of news "is legitimate when the following three conditions are involved:

a) social utility of information;

b) truth (objective or even just putative, provided it is the result of a serious and diligent research work) of the facts presented;

c) way of presenting facts and their assessment, not exceeding the information purpose to be achieved, marked by serene objectivity at least in the sense of excluding the preconception denigrating intent and, in any case, respectful of that minimum of dignity to which the most reprehensible of people is always entitled, so that the most human feelings can never be allowed to be trivial or derisory ".

Furthermore, as early as 1998, the Supreme Court explicitly recognized the right to be forgotten, describing it as "... *the right interest of every person not to remain undeterminedly exposed to further damage that causes the repeated publication of his honor and reputation. of a previously legitimately disclosed information* "(Section 3, Sentence No. 3679 of 09/04/1998). In this ruling – Court ruled - "*it has been specified that, for the legitimate exercise of the right of news, the existence of the requirement of the public interest regarding the fact narrated is not sufficient, but the news of the news is also necessary*".

The Court then recalled the recent guidelines for the delicate balancing between the right to report and the right to be forgotten, expressed in March 2018 by the First Section of Cassation (see Ordinance No. 6919 of 20/03/2018), which in order are:

a) the contribution made by republication to a debate in the public interest of the actual and current interest in the dissemination of the image or the news,

b) the high degree of notoriety of the subject represented, due to the particular position held in the public life of the country,

c) the methods used to obtain and give information (true, disseminated in a manner not exceeding the information purpose and free from insinuations or personal considerations),

d) the prior information about the publication in order to allow the interested party the right to reply.

This list, according to the Court’s reasoning, is not very clear and could lead to an excessive closure of cases in which oblivion prevails, leading it to be effectively ineffective. In fact, the ruling did not specify if these assumptions were requested in a concurrent way or alternatively: if you opt for cumulation, the right to be forgotten.
This list, according to the Court, is not very clear and could lead to an excessive closure of cases in which oblivion prevails, leading it to be effectively ineffective. In fact, the sentence did not specify if these assumptions were requested by way of concurrent or alternatively: if one were to opt for cumulation, the right to be forgotten would rarely prevail over the right to report.

The presented regulatory framework has also been enriched by the new European regulation on personal data, which in turn illustrates in which cases it is possible to request the exercise of the

right to be forgotten.

The Court concludes by stating that the importance of balancing the relationship between the right to news, information or the manifestation of thought and the right to be forgotten, makes the identification of unequivocal reference criteria "indifferent", and therefore puts the issue back to the "We therefore refer the case to the First President of the Court for the possible assignment to the United Sections of the question of maximum importance of particular importance, concerning the balancing of the right of news - placed at the service of the public interest in information - and of the so-called right to be forgotten - placed to protect personal privacy - in the light of the legal and jurisprudential framework in the internal and supranational legal systems.

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## Relation to the scope of the Charter

Even though the Charter has not been recalled directly by the Court in this judgement, it is striking how the righ to be forgotten has been considered a constitutional right to be balanced with other constitutional rights.
In the reasoning of the court,the balance between the right to report and the right to be forgotten affects the way of understanding democracy in our current civil society, which, on one hand makes the pluralism of information and their critical knowledge a fundamental pillar of it; and, on the other, it can not ignore the protection of the personality of the individual human person in its various expressions It seems to the College that, only starting from the concrete case, it is possible to define: when a public interest can actually be configured to the knowledge of facts (such being the insinuations of doubts and uncontrolled voices); when, in spite of the time passed by the facts, this interest can be considered current; in what terms, on the existence of said interest, can affect the gravity and the criminal relevance of the fact, the completeness (or incompleteness) of the news of the fact, the purpose of processing the data (if, for example, for research purposes scientific or historical, for statistical purposes, for information purposes or for other reasons, eg for marketing purposes), the notoriety (or lack of notoriety) of the person concerned, the clarity of the expository form used (also avoiding the unification and the combination of false news and true news).

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## Sources - EU and national law

Art 17 General Data protection Regulation

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