

Italy, First instance court Milan, decision 13716/15, 17 December 2015

Deciding bodies and decisions

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Area of law

Freedom of expression - hate speech

Subject matter

Which are the legitimate grounds for the limitation to freedom expression?

Are the limitations regarding the expression and gesture linked to an ideology based on discrimination, superiority of race, and ethnic hate legitimate?

Summary Facts Of The Case

In 2013, a neighborhood in Milan was populated by ROMA families, who were allegedly accused of having committed crimes against property and heritage. This caused a very high tension in that part of the city, and a set of protests against the ROMA settlement were organized. As a reaction to the protests, the Prefect decided for the forced eviction of the ROMA settlement.

In the occasion of the city council meeting after the eviction, another protest was organized by right-wing associations before the city council. In order to avoid the heightening of tension, some representatives of those organizations were invited to participate as observers to the city council. During the meeting, a left-wing councilor asked if the representatives of the right-wing association who had organized the protest were in the Council Chamber, because if that was the case the councilor would have left. As a reply, a criminal lawyer belonging to one of the right-wing organisations stood up to his question with the expression “proud to be here” and in saying so he raised his hand and arm straight in the manner of the fascist salute.

The scene was filmed by a journalist and seen by several participants to the city council. Given that the fascist salute is a criminal offence according to Italian law, general excitement followed, ended with the lawyer shouting to the left wingers “we shall face you on the streets”.

The court addressed the qualification of the fascist salute as a criminal offence according to national law (Law 205/1993) taking into account also international and European provisions, referring to the New York Convention of 1966, art. 14 ECHR, art. 19 TFUE, Chapter III of the CFR, art. 7 of the International Criminal Court Statute.

The Italian court addressed the crime along the qualification of discrimination based on race, colour, and ethnic origins as qualified by the New York Convention and by the Directive 43/2000 implemented at national level by Law 215/2003. According to national jurisprudence of the Supreme Court, the fascist salute qualifies as a manifestation typical of a political party having an ideology which favour the spread of discrimination, the superiority of race and ethnic hate. Thus,

the behavior of the criminal lawyer is affirmed to be a criminal offense made during a public meeting, such as the one which took place in the Council Chamber of Milan.

The Italian court then took into account whether the gesture could be covered by the principle of freedom of expression protected by art 10 ECHR and by art 21 of Italian Constitution. The Italian court drew a parallel between the jurisprudence on art 10(2) ECHR as regards limitations to freedom of expression and the interpretation of art 21 Const. as interpreted by the Italian Constitutional court in cases where a question of constitutionality was raised regarding laws deemed to be in conflict with freedom of expression principle.

In particular, the Italian court highlighted that the interpretation of the Constitutional court to law Law 645/1952 on apology of fascism by decision n. 25184/2009 is to be interpreted as an offence which do not limit freedom of expression per se, rather it limits the expression in case of public meeting where there is a foreseeable danger that such expressions, on the one hand, may favour the dissemination of idea based on discrimination, and on the other may constitute a potential trigger to disorders and violence.

Relation to the scope of the Charter

The Charter was only mentioned in a general manner, indicating its Chapter III dedicated to equality, where in particular art 21 CFR on non-discrimination is include. However, no additional analysis was provided so as to highlight the impact of the Charter in the reasoning of the national court.

Similar weight was given to art. 10 ECHR, though in this case a more detailed paragraph was dedicated to ECtHR jurisprudence where the feature of freedom of expression as a not absolute right is highlighted, so as to identify the legitimate limitations based “on the respect of equal dignity of all people as a basis for a democratic and pluralist society”, mentioning those cases that address hate speech, such as *Feret v Belgium* and *Incal v Turkey*

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Sources - EU and national law

Chapter III Charter
Directive 2000/43

Sources - ECtHR Case Law

ECHR, *Féret v Belgium*
ECHR, *Féret v Belgium*
