

Italy, Tribunal of Rovereto, 19 November 2015

Deciding bodies and decisions

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Area of law

Freedom of expression - Defamation and libel

Summary Facts Of The Case

In 2015, the president of a cultural association associated with a traditional view of Catholicism published, on the web page of the association, an article.

The article was entitled “B .: update the country (with paedophilia)”. The article included several quotations from previous writings and interviews by Mr B. dedicated to the sexuality of minors. Mr B. was in fact an intellectual and writer known for his unconventional and libertarian ideas. Additionally, the article included the image of a banner bearing the inscription “B. infamous paedophile”.

Mr B. presented a claim for defamation before the first instance court of Rovereto, which decided the case in abbreviated procedure.

The decision address in detail the legal issues emerging in case of defamation disseminated on Internet, taking into account the various national and European jurisprudential trends.

The court analysed in detail the content of the allegedly defamatory article. It supported the analysis with the ECtHR jurisprudence on the balance between freedom of expression – and in particular freedom of the press – and reputation and dignity. The reference case was *Lingens v Austria*, where the role of journalists as watchdogs of democracy was defined.

Moreover, on the basis of the facts of the case, the court affirms that freedom of expression is not univocal, stating that “if a public figure [...] releases scathing statements on sensitive issues such as sexuality in general and that of minors in particular, provocative and aggressive towards a well-identified part of public opinion, he can not complain if representatives of that same party react in an equally scathing manner, for the obvious reason that the freedom of expression of thought is valid for him as for its contradictory. Until the conflict is held at the level of a debate between ideas we can not doubt the full legitimacy of the debate, regardless of the tones used, but when ideas become verbal attacks against the counterparty, the legitimacy of the opinions expressed depends on the concrete manner and contents expressed”.

After having affirmed the defamatory content of the article, the court provided for a detailed justification regarding the sanction to be applied in this case. Firstly, the court explicitly affirms that custodial sanction may not be imposed according to the ECtHR jurisprudence on defamation cases. In particular, the national court referred to the decision in *Cumpana and Mazare v Romania* and *Belpietro v Italy* where the European court affirmed that prison sentence for crimes committed by press must be relegated to the cases of exceptional gravity. Accordingly, the Italian court order the application of a pecuniary sanction based on the gravity of the conduct.

It is important to note that the Italian court affirmed that the current formulation of art 13 of Law 47/1948 imposing custodial sentence in case of defamation by press may raise doubts of

compliance with ECHR provisions as well as with constitutional principle of freedom of expression. However, the Italian court did not go as far as presenting a question to the Constitutional court concerning such doubt.

Relation to the scope of the Charter

The EU Charter was not mentioned, but the reasoning of the court clearly linked the national constitutional provision on freedom of expression with art 10 ECHR.
