

Italy, Supreme Court, n. 6965/2017 (supreme) 17 March 2017

Member State

 Italy

Topic

Impartiality and accountability

Deciding Court Original Language

Corte di Cassazione, sez. Un.

Deciding Court English translation

Supreme court, Joint Chambres

Registration N

6965

Date Decision

17/03/2017

Subject Matter

Legal system – disciplinary proceedings against judges – in general

Publication of defamatory statements on a discussion forum of a blog –liability of judge – limits between freedom of expression and defamation

Legal issue(s)

Is the publication of offending statements of judges on a blog may raise disciplinary sanctions?

Request for expedited/PPU procedures

n.a.

Interim Relief

1. Indicate if the national court/applicant asked the CJEU/ECtHR for interim relief and a short summary of the reasons put forward
 2. Indicate if the CJEU/ECtHR granted the interim relief
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National Law Sources

Leg. Decree 109/2006 art 4

Art 21 Const.

Facts of the case

A judge participated to a heated debate on a discussion forum of a blog, the intervention was aimed at defending the work of the public administration. In doing so, he stressed that a climate had been erroneously painted in which "all lawyers, without distinguishing between prepared and valid lawyers and real goats, was the innocent victim of a Nazi-fascist, despot and self-referential system". The local council of the bar association condemned the use of such an expression and the president, in a letter, complained of an unjustified attack on his members.

The Disciplinary Section of the Judicial council held the Judge responsible for the damage to the reputation of magistracy, and for the common and serious incorrect conduct in the exercise of judicial functions, pursuant Article 2 (1) (d) and Article 4 (1) (d) Leg. Decree 109/2006. In particular, according to the Disciplinary Section, the judge should have avoided to participate into a discussion forum due to its position, even more so in case of matters concerning the administration of justice.

The judge appeal against the decision before the supreme court.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The Court upheld the appeal addressing firstly the victim of alleged defamation. According to its jurisprudence, the crime required a specific subject, though not expressly mentioned, but in any case identifiable. Given that in the specific case the victim could not be identified, the crime could not be applicable.

The court addressed the exercise of the freedom of expression of the judge which may not be qualified as exercise of judicial activity even in case of matters related to the administration of justice. In this sense the court affirms that the role played by judges must not imply an excessive

limitation to their ability to participate to public debate. Only in case of the exercise of their judicial functions this may be limited, but again according to a strict interpretation.

Relation of the case to the EU Charter

n.a.

Relation between the EU Charter and ECHR

n.a.

Author

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