

Italy, Supreme Court, n. 18987/2017 (supreme) 31 July 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

Keywords: Legal system – council of the judiciary

Publication of defamatory statements on Social network by a judge –application of disciplinary sanction by the Council of the judiciary

Legal issue(s)

When does the publication of defamatory statements by a judge can be qualified as a minor offence?

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

Legislative Decree no. 109/2006, art 3 bis and 4

Facts of the case

The applicant is a judge who published on facebook a statement allegedly defamatory against the Mayor of Rome. He was subject to disciplinary proceedings by the Council of the judiciary for defamation.

The disciplinary proceeding resulted the qualification of the statements as defamatory, but given the isolated episode in the context of a positive professional profile, considered that the conditions for the application of the exemption provided for in Legislative Decree 109/2006, art. 3 bis were met: the offence could not be sanctioned because it was of minor importance. The prosecutor appeal against the decision before the Supreme court.

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

The Supreme court overturn the decision of the disciplinary section. It clarified that in case of defamation the use of words and expressions that can be socially interpreted as offensive is crucial; and Article. 4(1)(d) leg. Decree 109/2003 addresses the reputation of judges, with the result that it is irrelevant that the addressee of the defamatory statements words may not have perceived them in that sense.

In other words, what counts is the seriousness of the offence from an objective point of view, regardless the attitude of the victim. This is a very important aspect that highlights even more how the unwitting use of social networks by a judge can not go unpunished, because the defamatory content published damage the reputation of the magistracy as an institution.

Relation of the case to the EU Charter

n.a.

Relation between the EU Charter and ECHR

n.a.

Author

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