

Italy, Court of Cassation, 19960, 30 January 2019

Member State

 Italy

Topic

Independence, freedom of expression

Sector

Freedom of Expression and Association; role of national higher courts; Disciplinary proceedings; Judicial Ethics; Role of Lawyers

Deciding Court Original Language

Corte di Cassazione

Deciding Court English translation

Court of Cassation

Registration N

19960/2019

Date Decision

30 January 2019

ECLI (if available)

N/A

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

N/A

Subject Matter

Freedom of Expression of Lawyers; right to criticize the decisions of prosecutors

Legal issue(s)

A lawyer was convicted of defamation for having criticized the professional conduct of a public prosecutor.

Request for expedited/PPU procedures

The decision is not a request for preliminary ruling.

Interim Relief

Not interim relief was requested.

National Law Sources

Article 21 of the Italian Constitution (freedom of expression); Article 595 of the Italian Criminal Code (Crime of defamation)

Facts of the case

After GR was acquitted of the charge of extortion, R - who, at the time, was deputy prosecutor at the Court of Arezzo – challenged the decision in appeal. The Court of Appeal ruled against GR; instead, the Court of Cassation plead for his full acquittal. Therefore, GR released an interview to the newspaper “Il Corriere di Arezzo” where he told to have lodged a disciplinary complaint against R to the Minister of Justice and the Attorney Generale at the Court of Cassation. The interview was found to have a defamatory content: GR and FF, the newspaper’s director, were convicted of defamation by the Court of Florence. Then, the Court of Appeal of Perugia partially reformed the conviction due to the prescription of the offence. Both GR and FF challenged the Court of Appeal’s judgment. GR claimed, firstly, that its assessment was limited to the cause of action and did not wholly cover the content of the interview. Moreover, he stressed that his words did not aim at offending R’s reputation, but to condemn his professional mistake. Again, in the applicant’s opinion, his words were not defamatory in themselves, and the Court of Appeal should have decided for a full acquittal. Secondly, the applicant claimed a violation of Articles 21 of the Italian Constitution and Article 10 of the European Convention of Human Rights (freedom of expression). In his view, the Court of Appeal found a lack of restraint without taking into due account that he legitimately criticized the position taken by R during the process and the reasons founding his appeal. By contrast, the applicant did not claim a professional misconduct by R. FF claimed among the others that the Court of Appeal did not recognise the right to criticize as interpreted by the European Court of Human Rights and the Italian Court of Cassation: in his view, the interview has no denigratory content; by contrast, it referred to real facts and did not go beyond the limit of restraint.

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

The Court of Cassation found that the decision of the Court of Appeal does not comply with the principles elaborated by the Court of Cassation on the crime of defamation. Notably, according to its jurisprudence, the defamatory content of an article supposes the assessment of its whole content: the evaluation of its text is not enough, and it must cover also the title, the subtitle, and the accompanying pictures. By contrast, in the challenged judgment the Court did not consider that the title and the subtitle reported objective and real information which have no defamatory content.

Moreover, the Court of Appeal did not take into account the whole content of the article and some GR's affirmations in which he specified that his disciplinary complaint was not a revenge, but rather the expression of his civic duty: notably he aimed to prevent other prosecutors from making the same mistake. More specifically, the Court of Appeal did not rightly apply the principle of restraint. According to a well-established jurisprudence of the Court of Cassation the limit of restraint is only exceeded in presence of seriously defamatory and humiliating expressions which turn out to be a real verbal aggression of the victim. Moreover, the limit of restraint implies that the criticising expression is strictly aimed to disapprove and did not entail any unfounded and unjustified aggression of the other's reputation. Applying these principles to the specific case at hand, the Court of Cassation found that in his interview GR expressed his legitimate criticisms to the professional conduct of R who – in GR's view – founded his appeal on some mistaken arguments. In this regard, the Court of Cassation stressed that, according to its jurisprudence on the right to criticise the judiciary, the right to criticise the judicial decisions and the conducts of prosecutors and judges must be recognised as much as possible: indeed, the criticism is the only efficient way to ensure a democratic control on the exercise of their activity which is carried out in full autonomy and independence. In the specific case at hand, the Court of Cassation found that GR's interview was compatible with the principle of restraint because the criticising expressions only aimed to disapprove R's professional conduct; by contrast, they were not seriously defamatory and humiliating.

Relation of the case to the EU Charter

The decision did not refer to the EU Charter.

Relation between the EU Charter and ECHR

The Court of Cassation did not explicitly refer to the ECHR, but the applicants mentioned the freedom of expression as enshrined in Article 10 ECHR.

Use of Judicial Interaction technique(s)

Proportionality

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

The Court of Cassation refers to some of its own judgments.

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

The Court of Cassation did not explicitly refer to the ECHR, not to the jurisprudence of the ECtHR.

Impact on Legislation / Policy

N/A

Notes on the national implementation of the preliminary ruling by the referring court

N/A

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred

to by the CJEU in its decision) or the Explanations?

No

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

No

Did the national court take into account national case law on fundamental rights?

No

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

Impact on national case law from the same Member State or other Member States

N/A

Connected national caselaw / templates

N/A

(Link to) full text

<https://www.ilcaso.it/giurisprudenza/archivio/21911.pdf>
