

The First Section of the European Court of Human Rights (ECHR), with a judgement of November 18th 2021, found no violation of articles 6§2 and 10 of the European Convention on Human Rights by Italy. The two provisions guarantee, respectively, the presumption of innocence and the freedom of expression.

The case concerned a finding of civil liability against the author of a book containing a reconstruction of the events preceding the summary execution of 43 captured soldiers of the Italian Social Republic (episode known as the "strage di Rovetta"). The historical account was overlaid with the author's private and personal recollections: some pages were devoted to the tensions between the author's anti-fascist relatives and a family supporting the fascist regime with whom they shared the house. Some of the applicant's remarks in relation to this family have been perceived as defamatory by their heirs, who lodged a criminal complaint.

Relying on art. 6§2, the applicant alleged a violation of his right to be presumed innocent caused by the finding of his civil liability following the appeal lodged by the heirs against the acquittal decision of the preliminary hearing judge, who considered that the remarks complained of, although "objectively defamatory", were not punishable since they had been made by the applicant in the exercise of his right to report and comment on historical events, a circumstance which exempted him from responsibility under the Criminal Code.

According to art. 6§2 of the Convention, «everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law». The European Court recalled that its general purpose is also to prevent people who have benefitted from an acquittal or the dismissal of a criminal case from being treated by public officials or judicial authorities as if they were actually guilty of the crime ascribed to them. In addition, in order for the right to a fair trial to be effective, the requests and observations of the parties must be duly examined and judicial decisions must sufficiently indicate the reasons on which they are based: in particular, when civil liability is found in the context of a compensation procedure for damage resulting from acts classified as criminal by national law, internal decisions must be based on a thorough assessment of the evidence presented and contain sufficient reasons, given the serious consequences that such findings could entail. In the present case, Strasbourg judges noted that the acquittal decision of the preliminary hearing judge did not become final and binding between the applicant and the civil parties in connection to the civil aspects of the offence: the Court of Appeal had confined its assessment to the constituent elements of the criminal offence, which had inevitably been the same as those examined at first instance, before finding, according to the rules on civil liability, that the applicant was civilly liable and was therefore required to compensate the civil parties for the damage sustained. This also emerged from the assessment carried out by the Court of Cassation on the unsuccessful applicant's appeal on point of law. The European Court noted that the Court of Appeal and the Court of Cassation have not used in their decisions a language or reasons that could cast doubt in the applicant's acquittal; their judgements – the result of a detailed analysis of the context, the book in question and the contested statements, in accordance with the jurisprudential principles of the European Court – did not disclose any violation of the applicant's right to be presumed innocent following his acquittal in criminal proceedings at first instance.

Finally, relying on art. 10 of the Convention, the applicant argued that the finding of his civil liability violated his right to freedom of expression, in particular that of report and comment on historical events. According to the ECHR, the interference with the applicant's freedom of expression, prescribed by law and aimed at the "protection of the reputation or rights of others", had not been disproportionate and the finding of civil liability against him did not disclose any appearance of violation of that article. The supranational judges, in line with what was established by the Italian judicial authorities, in fact found that the remarks complained of were not justified in the public interest and did not add anything to the reconstruction of the historical events surrounding the "strage di Rovetta".

Riferimenti Normativi:



Presumption of innocence and right to report: Italy «acquitted» by the European Court of Human Rights

Diritto civile Tutela dei Diritti

Denise Campagna

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- art. 6 Convenzione Europea dei Diritti dell'Uomo
- art. 10 Convenzione Europea dei Diritti dell'Uomo