

The Third Section of the European Court of Human Rights (ECHR), with a judgement of November 25th 2021, found no violation of the freedom of expression (art. 10 of the European Convention on Human Rights) by Italy.

The applicant, an editor-in-chief of an online newspaper, published an article about a fight in a restaurant, followed by a stabbing and the related criminal proceedings. One of the accused and the owners of the restaurant requested, with a formal notice, the removal of the article from the Internet. The applicant initially refused to do so, de-indexing the article only eight months later in order to amicably settle the dispute that arose following the appeals brought by the interested parties in civil proceedings. The Italian judicial authorities, however, found him liable for not having promptly de-indexed the article for an excessive period of time despite the plaintiffs' formal request, convicting him to pay 5,000 euros each, as compensation for the violation of the right to respect for the reputation of others.

The present case, departing from the previous ones judged by the European Court relating to articles 8 and 10 of the Convention, concerned the length of the time period and the ease of access to the sensitive data concerned and not their simple maintenance on the Internet. In fact, the fulcrum of the dispute can be found in the failure to de-index from the Internet search engine the tags contained in the article published by the applicant for an excessive period of time following the formal request of the interested parties to remove it. The European Court has specified that the terms "de-indexing", "de-listing" and "de-referencing", often used interchangeably in different sources of European Union and international law, indicated the activity of a search engine consisting of removing, on the initiative of its operators, from the list of results displayed (following a search made on the basis of a person's name), Internet pages published by third parties that contain information relating to that person. Technically, de-indexing could also be carried out by an editor. Therefore, the obligation to de-index material could be imposed not only on Internet search engine providers, but also on the administrators of newspaper or journalistic archives accessible through the Internet.

Having not doubted that the decisions of the Italian courts, which ascertained the applicant's civil liability, constituted an interference with his right to freedom of expression guaranteed by art. 10 of the Convention, and that such interference was "prescribed by law", namely the Legislative Decree 30 June 2003, n. 196, the Court decided to assess whether it was also "necessary in a democratic society" in the light of three specific criteria. First, the length of time for which the article had been kept online and the purposes for which claimant's data had been originally processed were considered. The criminal proceedings had still been pending at the time that the national ascertained the applicant's civil liability and the information contained in the article had not been updated since the occurrence of the events in question, in light of this circumstance. Moreover, notwithstanding the formal notice that the claimants had sent to the applicant requesting the removal of the article from the Internet, the said article had remained online and easily accessible for eight months. In that regard, the applicable domestic law read in the light of international legal instruments, supported the idea that the relevance of the applicant's right to disseminate information decreased over the passage of time, compared to the plaintiffs' right to respect for their reputation. Second, the ECHR focused on the sensitiveness of the data at issue: the subject matter of the article in question had related to criminal proceedings instituted against one of the plaintiffs. The circumstances in which information concerning sensitive data was published constituted a factor to be taken into account when balancing the right to disseminate information and the right of a data subject to respect for his or her private life. Finally, in assessing the gravity of the sanction imposed on the applicant, the European Court held that the amount of compensation awarded for non-pecuniary damage was not excessive, given the circumstances of the case and that his responsibility had been ascertained under civil and not criminal law. In view of the above, the finding by the national courts constituted a justifiable restriction of the applicant's freedom of expression, especially since he was not required to permanently remove the article from the Internet or to make it anonymous but only to de-index it within an appropriate period of time in order not to violate the private parties' right to respect for private life and to be forgotten.

Riferimenti Normativi:



Freedom of expression and right to be forgotten: Italy «acquitted» by the Strasbourg Court for having struck a fair balance in a case of late «de-indexing» of a judicial news item

Diritto civile Tutela dei Diritti

Denise Campagna

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- art. 8 Convenzione Europea dei Diritti dell'Uomo
- art. 10 Convenzione Europea dei Diritti dell'Uomo