

The Fifth Section of the European Court of Human Rights (ECHR), with a judgement of September 2nd 2021, did not rule against France for an alleged violation of art. 10 of the European Convention on Human Rights that guarantees the freedom of expression.

The applicant – at the material time a locally elected deputy and candidate in legislative elections – was criminally convicted of inciting hatred or violence against a group of people or a person because of a particular religion, as he did not promptly delete comments posted by third parties on the wall of his Facebook account, freely accessible to the public and used during his electoral campaign.

The European Court found that the parties involved agreed that the applicant's criminal conviction constituted an interference in the exercise of his right to freedom of expression. This interference violates art. 10 of the Convention, unless it is “prescribed by law”, it aims at protecting one of the legitimate purposes provided for in paragraph 2 of that article, or it is “necessary in a democratic society”.

The comments in question were clearly illicit: the national judicial authorities established that they clearly defined the group of people of Muslim faith to which they were directed, associating it with the delinquency and insecurity of the city of Nîmes; their meaning and scope tended to arouse a strong feeling of rejection, hostility and hatred against people of Muslim faith, real or supposed. These comments were published on the wall of the applicant's Facebook account, used in the context of an electoral campaign, a form of expression aimed at reaching the electorate in general, and therefore the entire population. The fact that the applicant was elected cannot be considered an extenuating circumstance of his responsibility. He was not criticized for exercising his right to freedom of expression in the political debate, but for lack of vigilance and reaction to certain comments posted on his Facebook account wall.

Strasbourg judges examined the applicant's behavior only in the period following the publication of the illicit comments as it was not possible to establish whether he had been informed of their content in advance. Then, he was held responsible as the producer of an online public communication site: the publication of messages sent by some internet users and the failure to remove the illegal ones led to his responsibility. Although considered “author” by the law and criminally sanctioned as such by the internal courts, the applicant was actually accused of a conduct distinct from that of the writers of the comments, convicted elsewhere. According to the European Court, it is legitimate to believe that the status of holder of the wall of your Facebook account entails specific obligations, in particular when you decide not to limit access but instead choosing to make it accessible to everyone. This is particularly true in a context which is likely to lead to manifestly illegitimate observations, as in the present case. It is true that national law and practice should make a clear distinction between the responsibility of the perpetrator of hate expressions and the possible responsibility of the media and media professionals who contribute to the dissemination of such expressions within their mission to publish information and ideas on matters of public interest. In this case, however, the comments were clearly illegal and indeed contrary to Facebook's terms of service.

Considering the specific circumstances of the case, the ECHR found that the national courts' decision to convict the applicant, for his failure to promptly delete the illegitimate comments posted by third parties on the wall of his Facebook account, used in the context of his electoral campaign, was based on relevant and sufficient reasons. Therefore, the disputed interference was deemed “necessary in a democratic society” and art. 10 of the Convention has not been violated by the respondent State.

Riferimenti Normativi:

- art. 10 cedu