



Ufficio Stampa della Corte costituzionale

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DEFAMATION THROUGH THE PRESS: MANDATORY IMPRISONMENT IS UNCONSTITUTIONAL, BUT A JOURNALIST’S ROLE SHOULD NOT BE TRANSFORMED FROM A “WATCHDOG” INTO A “DANGER TO DEMOCRACY”.

The current rules providing for a mandatory custodial sentence for the offence of defamation through the press or radio and television, aggravated by attributing a specific fact, are contrary to the freedom of expression, recognised both by the Italian Constitution and the European Convention on Human Rights. The threat of mandatory imprisonment can have the effect of dissuading journalists from exercising their crucial function of scrutinising the actions of public authorities.

Nonetheless, a custodial sentence is not per se incompatible with the Constitution when imposed on those who, for example, are responsible for “campaigns of disinformation conducted through the press, the Internet or social media, characterised by the spreading of accusations seriously damaging to the reputation of the victim carried out in the knowledge that the allegations in question are – objectively and demonstrably – false”. “Those who engage in such conduct – whether or not they are journalists – certainly do not perform the function of ‘watchdog’ of democracy, which is paradigmatically achieved through the search for and publication of ‘inconvenient’ truths. On the contrary, they pose a danger to democracy”, and may distort free elections.

These are some of the most significant passages from [Judgement No. 150](#) filed today (author: Judge Francesco Viganò), a preview of which was given in the [press release of 22 June](#).

The Court ruled on two questions raised by the Courts of Salerno and Bari, which had already been examined in June last year. On that occasion, the Constitutional Court had decided, in [Order No. 132 of 2020](#), to postpone judgment in the matter for one year, in order to allow the legislator in the meantime to reform this area of law, so as to better balance journalists' freedom of expression with the protection of individual reputation.

In the absence of any reform, the Court has now declared unconstitutional Article 13 of the Law on the Press (No. 47 of 1948), which stipulated a mandatory custodial sentence of between one and six years in the event of conviction for defamation through the press consisting of "attribution of a specific fact". Also declared unlawful was Article 30(4) of Law No. 223 of 1990 on the public and private broadcasting system, which extended the sanctions provided for in Article 13 of the Law on the Press to defamation committed by radio or television.

On the other hand, the Court upheld Article 595(3) of the Criminal Code as constitutional. That article provides for a custodial sentence of between six months and three years or, alternatively, the payment of a fine, in the event of conviction for defamation committed through the press or other media.

In the grounds of today's judgment, the Court reiterated what had already been stressed in Order No. 132 of 2020: freedom of expression "is a cornerstone of any democratic system, but individual reputation is equally an inviolable right, closely linked to the very dignity of the person"; and "unlawful attacks on this right", carried out through the press, radio, television, online newspapers, websites, social media and so on, "can have a major impact on the private, family, social, professional and political life of the victims".

According to both the Constitutional Court and the European Court of Human Rights, a custodial sentence is not per se incompatible with freedom of expression in cases where the defamation is exceptionally serious, both objectively and subjectively. Therefore, Article 595(3) of the Criminal Code was held to be constitutional provided that it is interpreted as meaning that an offender may be sentenced to a term of imprisonment only in such a scenario. In all other instances, a fine, commensurate with the actual gravity of the offence, will remain applicable, as well as civil remedies and disciplinary action.

“If limited to cases such as those envisaged just now – the Court observed – the abstract provision for and actual imposition of custodial sentences cannot intimidate journalists and pose undue obstacles to their essential function for a democratic society. Apart from those exceptional cases, which are very distant from the ethos of the journalistic profession, prison sentences will be ruled out for journalists, as well as for anyone else who has expressed their opinion through the press or other media.”

However, the Court stressed that the legislator remains free to ensure effective protection of the fundamental right to individual reputation without providing for custodial sentences. That said, the Court reiterated the need, already highlighted in Order No. 132 of 2020, for a comprehensive reform of the current rules with a view to “an overall system of sanctions capable, on the one hand, of avoiding any undue intimidation of journalists and, on the other, of ensuring adequate protection of the individual’s reputation against unlawful attacks carried out in the name of journalism”.

Rome, 12 July 2021