



Press Office of the Constitutional Court

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FREEDOM OF THE PRESS IS FUNDAMENTAL, BUT NEW TECHNOLOGIES AND SOCIAL MEDIA INCREASE REPUTATION RISKS

The balance struck between freedom of expression of thought and protection of reputation “cannot [...] be thought of as being fixed and immutable, because it is necessarily subject to adjustments, all the more so in light of the fast-paced evolutions undergone by technology and media in the last few decades.”

This was held by the Constitutional Court in [Order No. 132](#), filed today (Judge Rapporteur: Francesco Viganò), in which it postponed deciding the questions raised by the Ordinary Courts of Salerno and Bari, as to the constitutionality of the custodial sentence envisaged for libel, to a hearing scheduled for 22 June 2021. This was to provide the Legislator with an opportunity to approve new legislation on the subject.

The balance struck under the current legal framework has become inadequate. The Legislator must revise it, “including in light of the case law of the European Court of Human Rights [...], which states that – exceptional cases aside – imposing custodial sentences [...] upon journalists who, albeit unlawfully, damage another person’s reputation is disproportionate”, while also taking into account the need to avoid dissuading the media from exercising its vital purpose of holding public institutions to account.

The new balance must “reconcile the needs relating to the protection of journalistic freedom [...] with the equally crucial need to effectively protect the reputation of individuals against any abuse of this freedom; and today, the victims of such abuse are exposed to even greater risks than before. Think of the quick and persistent amplification of defamatory content made possible by social networks and Internet search engines”.

Such a sensitive balancing operation is principally a task for the Legislator. Indeed, the Legislator is best placed to “design a balanced system to protect the rights at play, one that envisages not only resort – as proportional to the objective and subjective seriousness of the wrongdoing at issue – to non-custodial criminal punishments, or to appropriate civil remedies and reparatory measures in a broad sense (such as the requirement to issue a correction statement), but also to effective disciplinary measures. This would be in line with the interest of associations of journalists in demanding that their members strictly observe the ethical standards guaranteeing the authoritativeness and prestige of their profession, which is essential in a democracy. Within such a framework, the Legislator can provide for imposition of a custodial sentence in case of behaviour that, given the national context, is exceptionally serious in subjective and objective terms. Notably, such behaviour includes defamation that implies incitement to violence or conveys hate speech”.

Rome, 26 June 2020