[IT] Court of Cassation Rules on Right to Image in relation to a Gay Pride Parade Television Feature

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On 18 September 2013, the Third Civil Chamber of the Italian Supreme Court of Cassation handed down a significant ruling concerning the scope of a person's right to the protection of his or her image in the context of television features concerning public interest events, namely the gay pride parade held in Rome on 8 July 2000.

According to Article 96 of the Italian Copyright Act (ICA), a person's image cannot be displayed without his or her consent. Article 97(1) ICA, however, stipulates that no consent is required, inter alia, when the display of a person's image occurs in association with facts, events, or formal occasions of public interest or taking place in public (hereafter: public events). Article 97(2) ICA qualifies the above exception, providing that a person's image, in any event, cannot be displayed in a manner that may be harmful to his or her honour, reputation, or good name.

The judgment of the Court of Cassation ends a lengthy lawsuit between RAI, Italy's public service media provider, and a man whose image was displayed, without his consent, in a television feature by RAI showing a group of people at the Milan railway station that were about to board a train to join the gay pride parade in Rome. That person sued RAI for the unauthorised use of his image in a context that, allegedly, misrepresented the claimant's sexual orientation. The claimant averred that he only happened by chance to be at the train station on that particular occasion.

On 28 January 2004, the Court of first instance in Rome ruled in favour of the claimant, ordering RAI to pay EUR 20,658 in compensation and to cover the legal costs of the case. The Court of Appeal, on 30 July 2007, reversed the judgment of the Court of first instance, thus prompting the claimant to lodge an appeal with the Court of Cassation.

The legal analysis of the Court of Cassation essentially focused on two elements: the notion of public event, within the meaning of Article 97(1) ICA, and the display of a person's image that may be harmful to his or her honour, within the meaning of Article 97(2) ICA.

With reference to the first issue, while the Rome gay pride parade's characterization as a public event was uncontroversial, the question arose

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whether the gathering of participants at the railroad station of another city to catch the train to the above parade could also be regarded as a public event. The Court took the view that the notion of public event should be construed as comprising also the facts that are unquestionably connected to the public event, such as the crowd at the Milan train station, in view of its clear and immediate connection to the gay pride parade in Rome.

Subsequently, the Court examined whether the display of the claimant's image in the context of the contested television feature could be regarded as harmful to his honour, reputation, and good name. In this respect, the Court noted that firstly, the claimant was in fact only displayed very briefly, in the midst of an anonymous crowd of passengers, which merely constituted the background to the contested television broadcast. Secondly, the Court ruled that the gay pride parade and the sexual orientation it sought to celebrate were both legal in Italy and devoid of any inherent negative connotation. Thirdly, the Court added that those who enter a railway station must accept the risk of being identified abstractly in a crowd of passengers - one of the 'risks of life' that no one can avoid.

Accordingly, the Court dismissed the appeal and ordered the claimant to cover the legal costs of the case. However, in the final paragraph of its opinion, the Court ordered that the claimant's personal data be blacked out from the text of the ruling, so as to protect his right to privacy.

Corte Suprema di Cassazione, Terza sezione civile, Sentenza del 18 settembre 2013, 24110

http://www.cortedicassazione.it/Documenti/24110_10_13.pdf

Supreme Court of Cassation, Third Civil Chamber, Judgment of 18 September 2013, no. 24110

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