Rome Commercial Court enjoins Facebook to reactivate CasaPound Italia’s account

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Amedeo Arena
Università degli Studi di Napoli "Federico II"

On 11 December 2019, Judge Stefania Garrisi issued an interim order on behalf of the Rome Commercial Court enjoining the social media company Facebook Ireland Ltd to reactivate the account of the extreme right-wing movement “CasaPound Italia” and that of its administrator, Davide Di Stefano.

On 9 September 2019, Facebook had closed CasaPound Italia’s account, with some 240 000 followers, as well as the accounts of some of its members and sympathisers, due to an alleged infringement of Facebook’s policy prohibiting the incitement to hatred and violence. The next day, CasaPound Italia asked Facebook to reactivate its account, but received no reply. CasaPound Italia thus lodged an application for interim relief with the Rome Commercial Court under Section 700 of the Italian Code of Civil Procedure.

In its order of 11 December 2019, the Rome Commercial Court, at the outset, recalled that the contractual relationship between Facebook and its users is governed by Facebook’s Terms of Use and Community Standards. However, the Rome Commercial Court added that, since Facebook plays a pivotal role in the implementation of the principle of political pluralism as laid down in Article 49 of the Italian Constitution, it must comply not only with the above contractual obligations, but also with the basic principles of the Italian legal order, ‘at least until a court establishes – in the context of ordinary judicial proceedings – that a given user has infringed those very principles.'

The Rome Commercial Court thus found that the deactivation of CasaPound Italia’s Facebook account was at variance with the principle of political pluralism, in that it precluded a political actor that had been ‘lawfully active on the Italian political scene since 2009’ from participating in the Italian political debate.

The Rome Commercial Court then turned to Facebook’s arguments for closing CasaPound Italia’s account, notably the infringement of the ban on incitement to hatred and violence as set out in Facebook’s Terms of Use and Community Standards.

The Rome Commercial Court observed that the promotion of CasaPound Italia’s values and goals through its Facebook account could not be regarded, *per se*, as a violation of the above ban. The court also found that episodes of violence or

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hatred against minorities involving CasaPound Italia's members, which had not been discussed on CasaPound Italia's Facebook page, could not be attributed to CasaPound Italia so as to justify the deactivation of its Facebook account, as that would amount to a form of strict liability, a principle that must be interpreted narrowly under Italian law. Moreover, the court ruled that posts displaying the Celtic cross or other symbols did not amount, in themselves, to a violation of the above ban and did not warrant the deactivation of CasaPound Italia's account, only the removal of the individual posts concerned.

The Rome Commercial Court also found that foreign court rulings on Facebook's hate speech policy were not relevant to the case at hand, as they concerned parties pursuing goals incompatible with the Constitution, an 'assessment on the merits' that Facebook had no authority to carry out and that, in any case, was not possible in the course of interim relief proceedings.

Finally, the Rome Commercial Court considered that, given Facebook's role in the implementation of the principle of political pluralism, the exclusion of a political actor was liable to give rise to irreparable harm, thus warranting an interim measure.

Therefore, the Rome Commercial Court enjoined Facebook to immediately reactivate CasaPound Italia's account as well as that of its administrator Davide Di Stefano, under penalty of the payment of EUR 800 for each day of delay, and to bear legal expenses for a sum of EUR 15 000. The interim order may be appealed within 15 days before a panel of judges of the Rome Commercial Court, as per Section 669-terdecies of the Italian Code of Civil Procedure.

Associazione di promozione sociale Casapound Italia and Davide Di Stefano v Facebook Ireland Ltd (59265/2019)

http://www.lacostituzione.info/wp-content/uploads/2019/12/Casa-Pound-v-Facebook.pdf

Social Promotion Association Casapound Italia and Davide Di Stefano v Facebook Ireland Ltd, Case no. 59265/2019

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