[IT] The burden of proof in press defamation lawsuits: according to the Italian Court of Cassation, journalists shall prove (at least) the trustworthiness of the facts narrated

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On 26th April 2022, with decision No. 12985, the Italian Court of Cassation re-affirmed a very important principle regarding the burden of proof in press defamation claims for damage compensation.

Specifically, in the case at hand, that was brought against the editor-in-chief of a newspaper, the plaintiff asked for compensation for damages he allegedly suffered because of a defamatory news article published in the newspaper managed by the defendant. The Court of Appeal rejected plaintiff's demands as he did not prove that the facts reported in the news article were untrue. However, the Court of Cassation reversed that judgement, holding that the burden of proof, in this kind of dispute, is governed by Section 2697 of the Italian Civil Code. Under this provision, whoever wants to assert a right in court must prove the facts on which such a right is based. Conversely, whoever objects to the existence of that right, or the effectiveness of the relative facts, must prove the facts on which the objection is based.

In addition, the Court of Cassation held that journalists are not liable for defamation when they lawfully exercise their right to inform, namely by reporting true facts or facts that appeared to be true at the time they were reported. In other words, under Italian law, journalists are not punishable for defamation whenever they publish (i) true news or (ii) news that they believed true, based on the fact-checking activities they carried out before the publication.

In light of the above, the Court of Cassation affirmed that in press defamation claims for damage compensation, plaintiffs have the burden to prove that defamatory news has been published. On the other hand, to effectively object that they lawfully exercised their right to inform, journalists must at least prove the trustworthiness of the facts narrated, i.e., not necessarily their historical truth. Once such proof has been provided, it is the responsibility of plaintiffs to show that the source relied upon by the journalists could not be considered credible at the time the news was released if the journalists had put in place proper fact-checking activities.

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Clarified that, the Court of Cassation overruled the decision rendered by the Court of Appeal and referred the matter back to the latter, which will have to ascertain whether the defendant proved that the facts narrated in the news article were true, or at least trustworthy, at the time the article was published, based on the fact-checking activities he carried out.

Corte di Cassazione, 26 aprile 2022, n. 12985

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Court of Cassation, 26th April 2022, decision No. 12985

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