

ITALIAN REPUBLIC
COURT OF ROME
XVII CIVIL SECTION

The Court of Rome, in the persons of the members:

Dr. Claudia Pedrelli	President
Dr. Fausto Basile	Judge
Dr. Vittorio Carlomagno	Judge rel

upon dissolution of the reservation taken at the hearing on 14.02.2020, he pronounced the following

ORDER

in the case registered under no. 80961/19, having as object: complaint pursuant to art. 669 *terdecies of the CCP* order made by the Court of Rome in monochrome composition on 11.12.19,

BETWEEN

FACEBOOK IRELAND LIMITED, registration number 462932, with registered office in Grand Canal Square, 4, Dublin 2, Ireland, represented and defended by Avv. Micael Montinari, Martina Lucenti and Filippo Frigerio,

COMPLAINT

IS

CASAPOUND ITALIA Social Promotion Association, based in Rome, Via Napoleone III n. 8, CF 97540420581, in the person of the legal representative, Gianluca Iannone,

DI STEFANO Davide, born in Rome on May 31, 1986, CF STDVD86E31H501I, resident in Rome, Via Napoleone III, n. 8, represented and defended by the lawyer Guido Colaiacovo and by the lawyer prof. Augusto Sinagra

COMPLAINTS

1. The CasaPound Social Promotion Association and Mr. Davide Di Stefano have appealed pursuant to art. 700 cpc against Facebook Ireland Limited, manager in Europe of Facebook online service, following the removal, on 9.09.19, of the page of the association and the personal profile of Mr. Di Stefano, complaining about the absence of prior notice and Facebook Ireland's failure to respond to the warning from them

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- transmitted, assuming that you have always respected the contractual conditions governing the service and consequently denouncing the breach of contract by the operator, as well as the existence of serious damage to one's image and to the free exercise of one's own political activity, constitutionally protected.
2. Facebook Ireland resisting the appeal claimed the violation by CasaPound dei terms of use (Terms of Use and Community Standards) accepted by this at the time of the request for the service, which expressly provide, in cases of greater seriousness, also definitive disabling and the right, not the obligation, to the manager of a quote reminder of their respect; in particular the prohibition of presence on the platform of “Organizations or individuals who proclaim violent missions or are involved in actions violent ”and to spread hateful and discriminatory messages, claiming that CasaPound is a movement that claims to be fascist, whose adherents are responsible for acts of violence e of discrimination, spreading hateful and discriminatory messages and using the service to disseminate such messages, incurring a plurality of violations of the conditions of use.
 3. The order today claimed in acceptance of the appeal pursuant to art. 700 cpc ordered a Facebook Ireland the immediate reactivation of the Promotion Association page Sociale CasaPound Italia at <https://www.facebook.com/casapounditalia/> and the profile personal of Davide Di Stefano, as administrator of the page, setting a penalty of € 800.00 for each day of violation.
 4. The ordinance starts from the relief of the importance assumed by Facebook for anyone who intends participate in the political debate and therefore for the implementation of essential cardinal principles of the legal system such as that of the pluralism of political parties (Article 49 of the Constitution); infers that the relationship between the operator and the user who intends to register for the service (or with the user already enabled to

service as in the case in question) is not comparable to the relationship between any two private subjects but that the manager holds a special position for which in the relationship with users he must

strictly adhere to the respect of constitutional and legal principles, until yes

demonstrate (with verification to be carried out through a judgment in full knowledge) theirs

violation by the user; concludes that compliance with the principles of the Constitution e

of the legal system constitutes both a condition and a limit for the manager

relationship with users.

He affirms, on the violations ascribed to CasaPound, that it is not possible to recognize incitement

hatred and violence in the mere promotion of its purposes on its Facebook page,

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however, since it is a subject legitimately operating in the Italian political landscape since 2009; that the episodes characterized by hateful attitudes against minorities and violence attributed to its members or sympathizers have not found entry on its Facebook page and that it cannot be held responsible for it by way of strict liability; in particular on violations strictly related to the use of the service, the dissemination of images in which it was present the so-called Celtic cross or other symbols, which these do not seem to be of such gravity justify the disabling of the entire page and that in fact the manager had limited himself in the first place time to remove individual content deemed unacceptable.

He concludes that, in the absence of ascertained violations and not being able to assess the contrary to the aims of the association with constitutional principles, the disabling of Facebook page is unjustified and productive of an injury that cannot be repaired by equivalent, relative to the CasaPound participation from the political debate, incident on assets constitutionally protected.

5. Complaints Facebook Ireland complaining that the order wrongly contested:

stated, in the absence of any legal basis, the specialty nature of the contract concluded with the user, which is instead an ordinary civil law contract, and attributed to manager, in the absence of an express provision of the law, public service obligations, when instead it is a private company operating for profit, not subject to discipline details, protected by art. 41 of the Constitution;

stated, in the absence of any legal basis, that some users - such as the organizations engaged in political activities - special protection must be guaranteed under the contract governing the Facebook Service, by virtue of their role in the debate

political, considering ineffective only towards them the rules of the service applied to all users and also accepted by them and burdening the manager to ascertain case by case, on the basis of checks unrelated to the contents of their Facebook pages, if they fall under the conditions that they would give the right to such special protection;

stated that it was precluded, in the absence of a prior judgment in full knowledge, the activation of the self-protection remedies provided for by the general regulations on contracts and by the specific contractual conditions;

did not note that CasaPound falls within the definition of a hateful organization required by the Community Standards, being "engaged in violence" through actions of "organized hatred" and "organized violence or criminal activity";

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did not draw the necessary consequences from CasaPound's call to fascism and therefore, inseparably from its crimes and its racist policies;

affirmed the irrelevance of conduct attributable to CasaPound but unrelated to the platform, in contrast with the terms of use, which necessarily make it possible to evaluate such conduct at in order to establish whether an association qualifies as an organization that incites hatred;

did not consider that the acts of violence committed by individuals, even if unrelated to platform, have a systematic character, have been put in place by a large number of belonging to the organization, including top management, under the banner of the association, in coherence with the ideas professed by it and in implementation of its aims, attributed by press to the association itself and rarely repudiate it but often openly claimed;

did not emphasize CasaPound's publication on the Facebook platform of multiple contents contrary to the Community Standards and the Conditions of Use;

did not take into account, in the evaluation of the *periculum in mora*, the wide availability in Internet of communication tools other than the Facebook platform.

Based on these elements it claims that the removal of the page and profile of the complained was justified and in any case that the requirements of precautionary protection are absent and therefore concludes for the complete reform of the contested order and for the rejection of the application

precautionary.

6. The defense of the complained in this phase first argues that the conduct of the user must be evaluated exclusively in the light of the negotiation discipline and that of Facebook; argues, however, that the complainant's claims on the nature of CasaPound are unfounded and unproven, as well as those on its liability for acts of violence or hate speech; he focuses on the relationship between CasaPound and fascism historical, stating that it proposes an actualization that exclusively enhances the social policies, and which has publicly condemned racial laws; disputes that any reference to that historical experience and that ideology can be qualified automatically as adherence to racist and discriminatory positions; invoking the freedom of manifestation of thought protected by art. 21 of the Constitution argues that demonstrations CasaPound's adherence to fascist ideology could only take on relevance if the limits envisaged by the criminal provisions dictated on the subject are exceeded.

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7. The panel considers undoubted the qualification of the relationship between Facebook Ireland and the user as an ordinary civil law contract - an atypical contract in which the manager provides a free document sharing and communication service which includes a the user's commitment to comply with certain conditions of use - with the consequence that the legitimacy of the exercise of the power of withdrawal of the service provider must be assessed primarily on the basis of the negotiation rules dictated by the same, according to the model of the contract for membership.
8. The qualification of the relationship in contractual terms and the absence of regulatory provisions special do not imply that its discipline is left without limits to bargaining between the parties and the power relationship between them nor that the exercise of contractual powers is unquestionable. The limits are those of a general nature ordinarily recognized for private autonomy, attributable to the general clauses of public order, morality, of good faith and the prohibition of abuse of the law, to be interpreted according to the principles constitutional. It must be remembered that according to the most advanced jurisprudential elaboration i principles of correctness and good faith in the execution and interpretation of contracts, as per art articles 1175, 1366 and 1375 cod. civ., are relevant both in terms of identifying obligations

contractual and on that of balancing the opposing interests of the parties and allow the judge to intervene also in an amending or supplementary sense on the content of the contract, if this is necessary to ensure a fair balance of the interests of the parties e prevent or repress the abuse of the law (Cass. Section 3, Sentence n. 20106 of 18/09/2009). Not Nor is the direct application of constitutional parameters as a limit to be excluded to private autonomy (see for example Cass. Section 1, Sentence no. 5476 of 04/06/1998, relating to freedom of association). In general, the private autonomy must be considered precluded limitation for one of the contractors to exercise constitutionally guaranteed rights, implemented by reconnecting to their exercise negative consequences on the contractual level, especially in absence of an objective justification in the function recognized to the contract; in this sense we can recall the paradigm of the prohibition of dismissal of the worker for political reasons, trade union and religious.

9. Thus the groundlessness of all the arguments of the complainant ascribable to the latter is revealed analysis to the assertion that being the Facebook service managed and organized by it rules dictated by it would be removed from any control; so much so that not even one express regulatory provision may limit your right to decide which content to host and which ones to exclude (page 15 point 4.4 of the complaint), and "The circumstance that it is

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an organization prohibited or not under Italian law would not employ any relevance. " (page 26 point 4.21 of the first instance statement of incorporation).

10. On the contrary, if the manager's position is attributable to the freedom of enterprise protected by art. 41 of the Constitution, that of the user is attributable, in the face of disputes relating to opinions expressed on the platform, to the freedom of expression of thought protected by art. 21 and, in the face of disputes relating to the nature and purposes of the association, art. 18 and therefore to values that in the constitutional hierarchy are certainly placed at one level higher. It must be concluded that the contractual discipline cannot lawfully assume as a cause for termination of the relationship manifestations of thought protected by art. 21 nor allow the exclusion of associations protected by art. 18; while it must be considered irrelevant question, although raised in the judgment, of the recognition of party quality in CasaPound political, since it does not appear that this can attribute any protection in interpreted relationships further than that already due under Articles 18 and 21.

11. The limits connected with respect for freedom of thought and association are of a general nature e they do not refer to special categories of users, nor do they involve the need for the operator of any additional verification, it being evident that in the moment in which these raises disputes relating to opinions expressed on the platform or to the nature and purposes of the association is already warned of the nature of the interests at stake; the limit of compliance with the freedom of thought then works the same way for organizations admittedly policies and for any other user who, occasionally or not, uses the Facebook service to express political opinions or disseminate information or documents of political interest; there difference is only in the extent of the harmful consequences that the unlawful removal of contents or the unlawful suspension of the service may determine.
12. The contractual rules are contained in the documents called Conditions of Use and Standards of the Community. In particular, the commitment not to use Facebook for purposes is highlighted illegal, deceptive, malicious or discriminatory "and not to" publish or perform actions on Facebook that do not respect the rights of third parties or the laws in force "and the prohibition of presence on the platform of "organizations or individuals who proclaim violent missions or who are involved in violent actions "and of" their leaders and their prominent members ". The Standards of Communities contain a definition of "hateful organization": "Any association of at least three persons organized with a name, a sign or symbol and which bears forward an ideology, statements or physical actions against individuals based on characteristics such as race, religion, nationality, ethnicity, gender, sex, sexual orientation, serious illness or

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disability ". Community Standards also prohibit "sharing on the [...] platform of symbols representing one of the organizations or individuals above except for purposes of condemnation or discussion "and of" content that praises the organizations and individuals referred to above or acts committed by them ". Here it should be noted that Facebook Ireland on the one hand claims not to be subject to regulatory limits on the other claims conformity to values constitutional and the laws in force of the limitations that it has included in the discipline of report, assuming that they are intended to protect the freedom of all other users to discuss on various subjects without being intimidated or offended by the color of their skin, theirs ethnicity, their nationality.

13. The contractual rules actually make it possible to give relevance as a justification

of the manager's withdrawal, to an intrinsic quality of the association which as such must not necessarily manifested in the use of the Facebook service. The college believes that fully comply with the limits of a general nature referred to above provided that where define the associations excluded from the service and the forbidden behaviors are interpreted in accordance with the laws of the state and in compliance with, or implementation of, constitutional principles or supranational sources define the limits of freedom of association and freedom of manifestation of thought. The need to refer to mandatory and external limits to the contractual discipline appears entirely consistent with the manager's need to comply with the obligations incumbent on the service provider under Directive 2000/31 / EC on services of the information society, recalled by the complainant, which instead could not be invoked to cover exclusively contractual limitations.

14. The normative disciplines that come into relief are the implementation of the XII provision transitory and final of the Constitution on the reconstitution of the fascist party (law 20 June 1952, n. 645) and that relating to racial, ethnic and religious discrimination (contained in law 13 October 1975, n. 654, of ratification and execution of the international convention of New York on the elimination of all forms of racial discrimination, and then in DL 26 April 1993, n. 122 converted with modifications by Law 25 June 1993, n. 205 and in articles 604 bis and 604 ter of the criminal code). They are addressed, the first to conducts that conflict with the democratic character and with the founding principle underlying the Constitution, the second to conduct conflicting with the constitutional principle of equality, which it consecrates solemnly the equal dignity and equality of all persons without discrimination of race, e in this way it legitimizes any ordinary law that prohibits and penalties, including penalties, in compliance of the principles of typicality and offensiveness, the diffusion and propaganda of racist based theories on the superiority of a race and justifying hatred and racial discrimination. IS'

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therefore, from a constitutional point of view, it legitimizes the limitation that they make of the law to the free expression of thought, protected by art. 21 of the Constitution, which cannot be extended up to the justification of acts or behaviors which, while expressing themselves in one externalization of one's convictions, however, undermines other principles of constitutional importance, ai which must be added the values protected by supranational sources and by Union law European Union, the 1966 New York Convention, the Statute of the International Criminal Court, the European Convention on Human Rights, the Charter of Fundamental Rights of the Union

European Union (with reference to anti-discrimination legislation, see Cass. Section 1, Sentence n. 556 of 28/01/1994; Cass. Section 1, Judgment n. 23024 of June 7, 2001; Cass. Section 5, Judgment n. 31655 of 24/01/2001; Cass. Section 3, Judgment n. 37581 of 03/10/2008).

15. The reasons put forward by Facebook Ireland for the exclusion of CasaPound from the platform are the publication of content not permitted by the conditions of use and i intrinsic characteristics of the association, derived from news reports and sociological studies, and from the examination of the positions it has taken in the public debate and of its statements ideal references.
16. Violations ascribed to CasaPound relating to posting prohibited content are solo summarily referred to in the complaint; these are communications relating to debates e public demonstrations, some of which have as their object protests against the presence of Roma camps, accompanied by photographs. In some of these photographs the so-called Celtic cross appears, in one case on a vintage image reproduced in the poster of a debate, advertised on the CasaPound Facebook page, on the history of the Youth Front (youth organization of the Italian Social Movement, a political party which, as is well known, was present in parliament for decades), in other cases represented on banners exhibited in public events. To the regarding the claimed order, he found that such episodes in themselves did not constitute one violation of such seriousness as to justify disabling the entire page, noting that they determined the removal of individual contents as the only immediate reaction deemed unacceptable. The college found that in case of violation of the rules by the terms of use provide for the application of increasingly serious measures, a starting from the removal of the contents up to the definitive disabling of the account, e considering that the last of the disputed episodes dates back to almost three months before the disabling the CasaPound Facebook page, believes that they, in the absence of facts subsequent, can no longer be placed as a basis for more serious measures than those already adopted by the manager. Moreover, it is significant that in the present judgment the complainant's defense as a whole they focus not so much on specific violations as on characters

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of the association and its affirmed incompatibility with Facebook standards and with i constitutional principles.

17. The acts of hatred and violence ascribed to CasaPound are, according to the defenses of the complainant, from press reports and sociological investigations relating to a plurality of crimes and of

manifestations of intolerance to the detriment of minorities, especially the Roma, who are referred to in their entirety, and therefore in a generic way, in the absence of any element of confirmation of Facebook Ireland's peremptory statements on the systematic nature of the acts of violence ascribed to individual members, on the top position held by some of the authors, on the use in their commission of the "insignia" of the association, on their openness claim by the association itself; so that such claims actually they presuppose, and do not support, the judgment on the illicit nature of the purposes and methods of action of the association. On the sociological level, on the level of the analysis of the situation public order and security, obviously on the political level, legitimacy is evident the investigation of the correlation between political dynamics and the level of social conflict and the frequency of acts of violence, even if it pays for an inevitable simplification of positions and actors in the field and does not require the attribution of individual responsibilities; but the method of such surveys and evaluations cannot be transposed on the different levels of the verification of compliance of the conduct of the parties with the contractual program and of lawfulness of the association according to the general order, in which they must find application, as noted in the order claimed, the burden of proof and the exclusion of any liability objective.

18. The compatibility of CasaPound with the contractual conditions must also be evaluated under the profile of the intrinsic nature of the association, legitimately inferable from his self-representation and the purposes stated by it. His ideal references and the political position are already evident in the choice of the name, which recalls the American poet Ezra Pound (1885-1972) who, as is well known, lived most of his life in Italy, was a admirer of Mussolini, during the war he gave a series of interventions against Italian radio the position taken by his country in the conflict, he was arrested in 1945 to be tried for treason in the US, he avoided trial but was interned in a psychiatric hospital and then, one once released, he returned to live in Italy.
19. According to the complainant, the reference even only to some elements of the fascist ideology is equivalent to supporting "policies incompatible with those of the Facebook Service" and therefore legitimate, in application of the contractual rules, the withdrawal of the manager. In this regard, the

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claiming that the racist and discriminatory character of fascism is a fact,

resulting not only from the adoption of the racial laws of 1938 but from statements by Mussolini dating back to the dawn of fascism and the attitude towards African populations of the colonies. He concludes that it is impossible to free the adoption of fascist ideals from racist and discriminatory characteristics that have historically distinguished them.

20. The evaluation of the lawfulness of the association, necessary for the reasons set out in the above points 8/11, must refer to the aforementioned advertising disciplines and therefore to the way in which the legislator, in implementation of the constitutional principles and supranational sources above recalled, and in compliance with the principles of offensiveness and typicality, has identified the associations illicit; in fact the limits to the freedom of association are marked by art. 18 of the Constitution, according to which citizens have the right to associate freely for purposes that are not forbidden to individuals by criminal law (see Constitutional Court, sentence no. 243 of 2001), and not by the verification of a generic conformity of the association with constitutional values, being *"The activity of associations which also propose a change in the legal system is permitted existing politicians, provided that this purpose is pursued with a democratic method, through the free debate and without recourse, direct or indirect, to violence "* (Constitutional Court, sentence no. 114 of 1967, v. also sentence no. 87 of 1966).
21. The Constitutional Court, in one of the first rulings on the implementing discipline of XII transitory and final provision, specified that this, in prohibiting the reconstitution of the party fascist, enunciates a principle or general direction, inspired by the need to protect the nascent democratic order, but leaves the ordinary legislator not only with discipline sanctioning but also the complete formulation of the precept (judgment of the Court Constitutional n. 74 of 1958). In this context, in the implementation of the XII provision, the legislator, within the scope of its discretion, has established which facts are illegal for the purposes of one reorganization of the dissolved fascist party, including those suitable for creating a actual danger in relation to the time and environment in which they are made and prohibited not only the final and conclusive acts of the reorganization but also manifestations, expressions, gestures, behaviors, which can constitute concrete causal antecedents of the reconstitution of the Fascist party (Constitutional Court ruling No. 1 of 1957 and No. 15 of 1973). So it has identified in art. 1 of the law of 20 June 1952, n. 645 the characters and purposes of a association or movement in the presence of which the precept laid down by XII must be considered violated provision, identifying alternatively different types of conduct: the pursuit of anti-democratic aims of the fascist party; the finalization of the associative activity to the exaltation of exponents, principles, facts and methods of the said party; the fulfillment of

outward manifestations of a fascist nature; the first type of conduct can be realized in alternative way through the exaltation, the threat or the use of violence as a method of struggle politics or advocating the suppression of constitutional freedoms or through the denigration of democracy, its institutions and the values of resistance or, finally, through the development of racist propaganda (Cass. Section 1, Sentence no. 9121 del 03/16/1978; Cass. Section 2, Judgment n. 9160 of 20/04/1979). The incriminating rule does not affects the neo-fascist association itself but its way of operating in political life and not it limits the free manifestation of thought, except as connected to acts of reconstitution of the Fascist party that present the objective characteristics it envisages and are suitable for determine the result (Cass. Section 2, Sentence no. 7560 of 05/03/1982); a stronger reason is the establishment and activity of movements that were considered extraneous to the regulatory provision make their own not the entire ideology of the dissolved fascist party, but only some of its own programmatic points (Cass. Section 2, Sentence no. 1564 of 27/10/1980). It must be concluded that this case, configured in terms of concrete danger, does not allow to affirm the illicit character of an association on the sole basis of the reference to fascist ideology but it requires additional elements, relating to the specific aims pursued and the methods of action.

22. The subsequent legislation dictated to protect the constitutional value of equality arises in a partially different and in any case broader perspective, having as its aim the propaganda of ideas based on superiority or racial or ethnic hatred and commission and incitement to committing acts of discrimination on racial, ethnic, national or religious grounds; it qualifies as illegal any organization, association, movement or group having among the incitement to discrimination or violence on racial or ethnic grounds, national or religious. It also refers (starting from l. 16 June 2016, n. 115 which has added paragraph 3 bis to article 3 of law no. 654, repealed in its entirety from art. 7 of Legislative Decree 1 March 2018, n. 21 and transfused in art. 604 bis of the code criminal) to the denial, to the serious minimization or to the apology of the Shoah, as well as crimes of genocide, crimes against humanity and war crimes, as defined by the Articles 6, 7 and 8 of the Statute of the International Criminal Court.

23. This discipline identifies a purpose, the incitement to discrimination or violence for racial, ethnic, national or religious reasons, which makes the association illegal, and whose existence it can legitimately be deduced from its statute and its political program. In prospect of the complainant, this purpose would actually exist, being due deduce from the references to the ideology and experience of fascism present in his program political, available on its website, and by deduction of racist and discriminatory characteristics

proper to this regime. Indeed, the complainant, who cites the CasaPound program extensively (doc. no. 64), does not indicate any declaration or any programmatic point of a racist nature or discriminatory; his position on this point is essentially based on the statement the inseparability of these aspects from the ideology and experience of fascism. In this regard he cites Cass. Section 5, Judgment n. 19449 of 08/01/2010, which does not concern the identification of limits of the criminal offenses mentioned above but, in the matter of defamation, he recognized the exemption of the right of historical and political criticism in the use towards adherents to the Forza Nuova association of the expressions "Nazi-Fascists" and "neo-Nazis", considering the basis of historical data, in particular of the racial laws of 1938 and of the collaboration in period of the RSI with the German occupier in the persecution and deportation of the Jews, which the the quality of a "fascist" cannot be purified from the quality of a racist and the approach to Nazism and therefore that these terms, while objectively offensive, had a basis of truth.

24. But it must be asked whether an extension of the perimeter of prohibited associations based on such bases is permitted by the reference standards. The negative answer is necessary for the character of typicality of the penal norm, which in its prescriptive content embodies the principle of offensiveness. The regulations examined in no case sanction the mere manifestation of the thought but refer to conduct of different gravity and intensity that they present further connotations that qualify them according to the cases as diffusion, propaganda, incitement, incitement, apology; with regard in particular to banned associations from art. 3 of Law 654/75 the element in which the offensive character is substantiated is the purpose (of incitement to discrimination or violence) of which the effective is not required realization but which must still have somehow manifested itself in the world material; so that such an extension of the prohibition would operate in the absence of such connotations objective and would affect only a thought content imputed on the basis of a deduction abstract, according to which the subject could not fail to have a thought corresponding to the one whose manifestation is assumed to be illicit, when instead freedom of thought implies logically, the freedom to identify the contents and values to adhere to, even by choosing, reworking, variously combining those already known in the vast repertoire offered by the history of thought and from the experience of humanity, not being able to be reduced to the initial choice between one or the other coded system, as if such a choice were necessary and as if it could exhaust the exercise of a critical spirit. Ultimately any criterion by which it claims to attribute racist or discriminatory positions by derivation from thought contents in which

objectively such contents cannot be found can only be arbitrary and therefore radically unsuitable to define the boundaries of the legitimately marked limits to the freedom of

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manifestation of thought; the value judgment on the historical and ideal references recalled by each actor in the political debate, such as that on consistency with these references of principles affirmed in the present time, it thus remains entrusted to the free comparison of ideas.

25. On the basis of what has been deduced and documented in this judgment, there is no elements that allow us to conclude that CasaPound is an illicit association according to the general order. The need to bring judgment back to this parameter is imposed from the impossibility of recognizing a private subject, such as Facebook Ireland, on the basis of negotiating provisions and therefore by virtue of the disparity in contractual strength, powers substantially affecting the freedom of expression of thought and association, such as exceed the limits that the legislator himself has set himself in the criminal law. Judgment finds comfort in the fact that, as noted in the claimed order, CasaPound is openly present from many years in the political landscape. In any case, it seems useful to specify that the evaluation finds the its limit in the subject of this judgment, the verification of the compatibility of CasaPound with the contractual discipline concerning the conditions of use of Facebook as the facts e of the attached documents, since this judge does not have the function of attributing in general to an association a "license" of lawfulness, given that a condition and limit of the activity of any association is compliance with the law, the verification of which is subject to control widespread jurisdiction.
26. The exclusion of CasaPound from the platform must therefore be considered unjustified in all respects profiles recalled by Facebook Ireland. The *periculum in mora* must be considered to exist on the based on the considerations carried out in the claimed order, which deserve full agreement, on prominent and relevant role assumed by Facebook in the context of social networks, and therefore objectively also for participation in the political debate. The internet availability of other communication tools cannot be considered sufficient to exclude the seriousness of the prejudice, which is also evident only from the data on the number of users of the platform, equal to 2.8 billion (data reported by Facebook Ireland).
27. The complaint must therefore be rejected and the claimed order confirmed. The expenses, cleared as in the device, they follow the unsuccessful. Finally, the extraneousness of the present must be noted dispute on matters devolved to the Court for Companies and the consequent disposition

PQM

rejects the complaint and confirms the contested order;

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condemns the complainant Facebook Ireland Limited to reimburse the litigation costs incurred by Social Promotion Association CasaPound Italia and Davide Di Stefano, claimed, which liquidates overall in € 12,000.00 for fees, plus VAT, CPA, reimbursement of general expenses; pursuant to DPR 30 May 2002, n. 115, art. 13 paragraph 1 quater, inserted by Law no. 228 of 2012, art. 1 paragraph 17, declares the existence of the conditions for the payment by the claiming the additional amount as a unified contribution equal to that due for the complaint, pursuant to the aforementioned art. 13, paragraph 1 bis; send to the Chancellery for the correction of the registration of the proceedings as proceedings ordinary and not of the specialized business section.

So decided in Rome in the council chamber of 29.04.2020

THE EXTENDING JUDGE

Dr. Vittorio Carlomagno

PRESIDENT

Dr. Claudia Pedrelli

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