*Forza Nuova v. Facebook Ireland NTD*

Summary and Outcome

On February 23, 2020 the Court of first instance of Rome rejected the appeal brought by a number of plaintiffs whose profiles had been disabled by Facebook Ireland (hereinafter “Facebook”), due to their connection to the Italian neo-fascist party Forza Nuova. The plaintiffs considered the social network’s decision to be violating their right to freedom of expression. The Court found Facebook’s actions to be lawful and compliant with supranational and national provisions on freedom of expression.

Facts and Context

As noted by the Court, the case under analysis is not concerned with a generalised judicial compression of freedom of expression of groups or individuals. Rather, it regards the right of a political group to access a privately-owned social network (and social media) to share information on its activity.

Facebook has removed the profiles of the users who were identified as administrators of several pages connected, by different means, to the party “Forza Nuova”. Forza Nuova describes itself as a neo-fascist organization, expressly repudiating the values of anti-fascism. It regularly makes racist, xenophobic and antisemitic propaganda. Facebook has identified a number of posts whose content was openly fascist and racist, and which were explicitly inciting violence. Hence, it has qualified Forza Nuova as a “hate organization” acting in breach of its contractual conditions and Community Standards (*see* below) and for these reasons has terminated the contract and interrupted the provision of its services to those users, by disabling their accounts and removing the pages they administrated.

The plaintiffs consider such a conduct to be illegal and in violation of their fundamental right to freedom of expression and have brought an action before the Court of first instance of Rome requesting the reactivation of their profiles and of the pages they administrate. The plaintiffs acted pursuant to Article 700 of the Italian Civil Procedural Code. Article 700 c.p.c. provides for an emergency and precautionary proceeding to be deployed by parties whenever there is the well-grounded fear that by the time the ordinary proceeding is concluded, they would have suffered an irreparable harm.

Decision Overview

The Court started by providing an extensive overview of supranational and national legislation and case-law, that justified considering Facebook’s decision to disable the accounts not to violate freedom of expression.

**International Law**

The Judge observed that international law, when assessing the limits to freedom of expression, does not allow for any protection of hate speeches or discrimination.

* The *Universal Declaration of Human Rights* (1948), at Article 7 provides that: “All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.
* The *International Convention on the Elimination of All Forms of Racial Discrimination* (1965), at Article 4 provides that: “*States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form*, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia (…) (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law”.
* The *International Covenant on Civil and Political Rights* (1966), at Article 20.2 provides that: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

**European, European Union Law and Case-law**

In the analysis of European Union law, the Court first pointed out that human dignity is a fundamental value of the Union (*see* Article 2 *Treaty of the European Union* (TUE)) and that it is considered to be inviolable (Article 1 *Charter of Fundamental Rights of the European Union* (CFR) (2000). EU law further both provides for the right to freedom of expression (Article 10 CFR) and prohibits any form of discrimination (Article 21 CFR; Articles 9,10 and 19 TFEU).

The *European Convention on Human Rights* (1950) not only prohibits any form of discrimination at Article 14, but, at Article 10 (“Freedom of expression”) establishes that freedom of expression may be subject to restrictions. It states: “The exercise of these freedoms, since it carries with it duties and responsibilities, *may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society*, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others (…)”.

Equally relevant is the case-law of the European Court of Human Rights (ECHR) on the subject of hate speech. The Court of Rome referenced to the case-law establishing that while freedom of expression in a democratic society cannot be restricted when the expression is concerned with the promotion of fundamental values and human rights, conversely it is legitimate and necessary for a State to intervene and punish hate speech directed at limiting freedom and equality. The ECHR has also stated in numerous occasions that for hate speech to exist the incitement to *acts* of violence is not necessary. Rather, it sufficient the expression of racist ordiscriminatory ideas.

Further, the Judge recalls different initiatives and legislations adopted by the EU institutions with regards to hate speech.

* *Council Framework Decision 2008/913/JHA* of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. Article 1 of the Decision, regarding “Offences concerning racism and xenophobia” provides that “Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable: (a) *publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin* (…)”.
* The *EU* *Code of Conduct on Countering Illegal Hate Speech* *Online* (2016) has been adopted to prevent the prolification of hate speech online and has since been signed by Facebook and others (e.g., Instagram, YouTube, Dailymotion, etc.). The Code states that IT companies share a collective responsibility in promoting and facilitating freedom of expression throughout the online world, and also share with the European Commission and the Member States the commitment to tackle illegal speech online. According to the Code, platforms have to review (within 24 hours) the notification of illegal hate speech and have to remove discriminatory or hateful posts and comments. What creates the strongest concern is the chance for hate speech to instantaneously disseminate and remain in place in the online context.
* *Directive 2000/31/EC* on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. Recital n. 40 and n. 46 of the Directive respectively establish that “service providers have a duty to act, under certain circumstances, with a view to preventing or stopping illegal activities” and that “*in order to benefit from a limitation of liability, the provider of an information society service (…) upon obtaining actual knowledge or awareness of illegal activities has to act expeditiously to remove or to disable access to the information concerned*” (*see* also Article 14). The Court of Rome further makes a reference to the case-law of the Court of Justice of the European Union (CJEU) concerning the Directive. In Case C‑18/18 *Glawischnig-Piesczek* v *Facebook Ireland Limited*, the CJEU stated that Facebook and other providers do not have a general obligation “to monitor the information which they transmit or store, or a general obligation actively to seek facts or circumstances indicating illegal activity” (paras 31 and ff.). However, “it is apparent from Article 14(3) of Directive 2000/31, read in conjunction with recital 45, that that exemption [*see* above] is without prejudice to the power of the national courts or administrative authorities to require the host provider concerned to terminate or prevent an infringement, including by removing the illegal information or by disabling access to it” (para 24).

**Domestic Law**

The Court began the analysis of Italian law by explaining that in the Italian system the right to freedom of expression can be restricted in different ways, when the need to repress discrimination comes into play. The scholarship and the case law agree that hate speech do not fall within the scope of freedom of expression, in that the latter cannot violate inviolable and fundamental human rights, such as equality, as prescribed by the Italian Constitution (*see* Article 2 and 3 Cost.).

* **Criminal law**: criminal punishment should always represent the *extrema ratio*, but the provision of some criminal offences is justified by Articles 3 (granting the right to equality), 2 (granting the fundamental rights of the individual), 10 and 117 (imposing on the Italian Republic to comply with supranational legislation) of the Italian Constitution.
* Article 604-*bis* of the Italian Criminal Code (originally Article 3 of Mancino Law, No. 654, 1975) punishes any propaganda grounded in supremacism or racial hate and the incitement of violent acts on the basis of ethnicity, race and religion. Further, it prohibits any organization, association, movement or group which has, within its aims, discrimination or violence on the basis of race, ethnicity, nationality or religion. In 2008, the Supreme Court found the Mancino Law not to be in breach of Article 21 of the Constitution (regarding freedom of expression). The Court stated that the constitutional right to freedom of expression is not “absolute” but must be coordinated with other equally relevant constitutional values such as equality (Corte di Cassazione (Supreme Court), Section III, No. 37581 07/05/2008)
* Scelba Law, No. 645, 1952 prohibits the reconstitution of the fascist party, in any form and punishes individual and collective behaviors such as the apologia (i.e., the *defense*) of fascism.

It is established opinion in the case law and amongst scholars that if hate speech happens via mass media or the web, the conduct is dangerous *per se* to the democratic system and hence criminally relevant. Such a behavior cannot, under any circumstance, be justified by the right to freedom of expression.

* **Anti-discrimination law**:
* Article 43 Legislative Decree, No. 286, 1998 defines discrimination as any behavior that, directly or indirectly, entails a differentiation, exclusion, restriction or preference on the basis of race, color, ancestry, national or ethnic origin, religion or any behavior that has the aim or the effect to destroy or impair the recognition, enjoyment or exercise, on equal terms, of human rights and fundamental principles in the political, economic, social and cultural sphere and in any other sector of the public life.
* Article 2 Legislative Decree, No. 215/2003 (*see* Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin) provides that “principle of equal treatment” means that there must be no direct or indirect discrimination based on race or ethnic origin.

Once provided an extensive overview of national and supranational legislation, the Court concluded that *human dignity* and the *prohibition of any discrimination* are the main values that may legitimate restricting freedom of expression. Further, the Court observed that supranational obligations require both States and social networks such as Facebook to control and prevent hate speech.

 **Facebook’s Contractual Conditions**

Proceeding with its analysis, the Judge first observed that Facebook is a private entity, whose relationship with its users is regulated by contractual conditions (Terms of Service) to which the individual user adheres. According to Facebook’s Terms of Service, users may not use the social network for illegal, deceptive, malicious or discriminatory purposes and may not publish posts which violate third party’s rights or are in breach of the existing law. Article 1 of Facebook’s Terms of Service provides that “People will only build community on Facebook if they feel safe. We employ dedicated teams around the world and develop advanced technical systems to detect misuse of our Products, harmful conduct towards others, and situations where we may be able to help support or protect our community. *If we learn of content or conduct like this, we will take appropriate action - for example, offering help, removing content, blocking access to certain features, disabling an account, or contacting law enforcement*”. Further, pursuant to Article 3.2 users may not use Facebook’s products “to do or share anything:

* + That breaches these Terms, our Community Standards and other terms and policies  that apply to your use of Facebook.
	+ That is unlawful, misleading, discriminatory or fraudulent.
	+ That infringes or breaches someone else’s rights, including their intellectual property rights”.

In case Facebook determines that a user has “clearly, seriously or repeatedly breached (…) [the] Terms or Policies, including in particular (…) [the] Community Standards”, the social network may “suspend or permanently disable” access to the user’s account and “may also suspend or disable” it if the user “repeatedly infringe[s] other people’s intellectual property rights or where we are required to do so for legal reasons” (Article 4 of the Terms of Service).

For the purpose of the case examined, the Court recalled that Facebook’s Community Standards, under the section “Violence and Incitement” explicitly establish that the social network will “remove language that incites or facilitates serious violence”. Secondly, section “Dangerous Individuals and Organizations” explains that “In an effort to prevent and disrupt real-world harm, *we do not allow any organizations or individuals that proclaim a violent mission or are engaged in violence to have a presence on Facebook*”. Amongst those organizations are included “hate organizations”, which are defined as associations “of 3 or more people that (…) [are] organized under a name, sign, or symbol and that (…) [have] an ideology, statements or physical actions that attack individuals based on characteristics, including race, religious affiliation, nationality, ethnicity, gender, sex, sexual orientation, serious disease or disability”.

**Forza Nuova**

In order to assess whether the plaintiffs have acted in breach Facebook’s Community Standards and Terms of Service, the Court examined the principles and ideas inspiring Forza Nuova’s political agenda, and the party’s activity.

First, on the website of Forza Nuova is demanded the abrogation of Mancino Law and Scelba Law (*see* above), which are described as “liberticidal” and as the expression of a “dominant culture tyrannically preventing thoughts and actions in defense of our history, cultural and religious heritage”. Secondly, there are numerous examples of express reference to the positive role fascism has had in the historic context preceding the “Liberazione” from the nazi-fascist regime (“Liberation Day”, April 25, 1945) and fascist symbols are frequently used in flyers (e.g., Forza Nuova Calabria 2019: flyer showing a picture of Benito Mussolini), and other forms of communication (for instance, during national and European elections). Further, the group systematically organizes protests on the occasion of Liberation Day: in that context, banners stating “Mai più antifascismo!” (“Anti-fascism: Never Again!”) and similar messages have been displayed. Finally, Forza Nuova’s propaganda openly and aggressively targets the members of the LGBTQ+ community (protesting against civil unions between gay couples or accusing its members of pedophilia), Roma people, and migrants (accusing them of raping Italian women and of perpetrating different crimes).

**Assessment of the conduct in light of the legislation and of Facebook’s Community Standards**

The Court found the decision of Facebook to interrupt providing the service to the plaintiffs to be legitimate, and to do so it adopted the following reasoning. First, in light of the ideas on which Forza Nuova is based and in light on the conducts it ordinarily puts into places, the Court qualified it as a “hate organization” whose propaganda is prohibited by Facebook and by the law. Second, it regarded the plaintiffs’ conduct as being in breach of the social network’s Community Standards according to which:

* + symbols representing hate organizations cannot be shared on the platform “without context that condemns or neutrally discusses the content”
	+ content praising hate organizations or “any acts committed by them” is not allowed on the platform
	+ “coordination of support” for hate organizations is not allowed on the platform

Further, the Judge observed that both the Community Standards and Facebook’s Terms of Service are compliant with the EU Code of Conduct to which the social network has adhered.

All the plaintiffs have engaged in conducts contrary to Facebook’s contractual conditions, by administrating the pages of Forza Nuova or of groups affiliated to it (e.g., Lotta Studentesca; Sindacato Nazionale Lavoratori Italiani – Sinlai). Further, few of them were electoral candidates for Forza Nuova, or had managing roles within the party. Examples of the content shared on Facebook by the plaintiffs include:

* + A post requesting the exclusion of Roma people from social services (Page: “Forza Nuova Roma”);
	+ A picture showing a banner on the Colosseum stating “Mussolini per mille anni” (“Mussolini for one thousand years”) on the anniversary of Benito Mussolini’s death (Page: “Forza Nuova Roma”);
	+ A post showing a drawing of a woman chased by three men, with the sentence “RAPEUFEES NOT WELCOME” (Page: “Forza Nuova”);
	+ A post reciting “VIVA IL FASCISMO. BENITO MUSSOLINI PRESENTE” (“Long live fascism. Benito Mussolini is present”) (Personal account of one of the plaintiffs).

**Conclusion**

The Judge concludes that the social network’s decision to disable the accounts is legitimate and justified. The content shared by the plaintiffs, either on their profiles or on the pages of Forza Nuova, not only is in breach of Facebook’s Terms of Service, but it also violates supranational and national provisions. In light of this, Facebook has both the *right* to terminate the contract, and the *duty* to remove the content according to what has been established by the CJEU, Directive 2000/31/EC and the Code of Conduct the social network has signed.

For the reasons explained above, the Court rejected the appeal.

Case significance

Provided that the plaintiffs’ conduct was considered to be in violation of relevant supranational and national laws, the decision establishes a binding or persuasive precedent within its jurisdiction.

Global Perspective

National standards, law or jurisprudence

* Italian Constitution, arts. 2, 3, 10, 21, 117
* Italian Criminal Code, art. 604-*bis*
* Italian Civil Procedural Code, art. 700
* Mancino Law, No. 654, 1975, art. 3
* Scelba Law, No. 645, 1952
* Legislative Decree, No. 286, 1998, art. 43
* Legislative Decree, No. 215, 2003, art. 2
* Corte di Cassazione (Supreme Court), Section III, No. 37581 07/05/2008

Related International Laws

* Treaty of the European Union, art. 2
* Treaty on the Functioning of the European Union, arts. 9, 10, 19
* Charter of Fundamental Rights of the European Union, arts. 1, 10, 21
* European Convention on Human Rights, arts. 10, 14
* Council Framework Decision 2008/913/JHA
* Directive 2000/31/EC, recitals no. 40 and 46, art. 14
* Directive 2000/43/EC
* Universal Declaration of Human Rights, art. 9
* International Convention on the Elimination of All Forms of Racial Discrimination, art. 4
* International Covenant on Civil and Political Rights, art. 20.2
* Case C‑18/18 *Glawischnig-Piesczek* v *Facebook Ireland Limited*