

Supreme Court rules on jurisdiction in online defamation cases

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By Antonella Barbieri and Francesca Besemer

The Supreme Court has declared that in online defamation cases, the competent court is the court of the accused's place of residence.(1) The decision in question related to a person who was accused of defamation in two different proceedings; one was heard by the Criminal Court of Sassari (ie, the court of the accused's place of residence) and the other by the Criminal Court of Arezzo, which was the location of the computer server. The decision is in line with recent Italian case law, in which the residence of the accused is considered to be the only determining factor in deciding territorial competence in online defamation cases. The crime of online defamation is part of the more general offence of defamation, which covers the press, television and other media. However, in statute and case law, defamation on the Internet is considered a separate type of offence because of the difficulty of identifying the place of the defamation and the territorial competence of the judge. The crime of defamation is a so-called 'crime of event' and is committed when the defamatory information reaches a third party (other than the injured party and the offender).

In the event of defamation by the press, case law has established a presumption that a crime is committed where the newspaper is printed or at the point at which the first newspaper is distributed. In respect of defamation on television, Law 223/1990 provides that territorial competence is determined by the place of the injured party.(2) However, no specific law governs competence in online defamation cases. Therefore, the general rules in Articles 8 and 9 of the Criminal Procedure Code apply. They provide that territorial competence is based on the location at which the relevant criminal act is performed. If this place is impossible to identify, competence is determined by the accused's place of residence. Online defamation can be committed by email (or through

online chat systems or social networks), even where the number of potential readers (ie, addressees or users) is limited. The offence is also committed where defamatory information is posted directly on a website. A defamatory statement that is communicated by email is sent to one or more addressees; if it is posted on a website, it is potentially made available to anyone who can access the Internet. Supreme Court case law⁽³⁾ has established that if a party uses or creates a web page, the information is affixed to the web page; any internet user can access and read it directly from his or her computer. The Supreme Court has established that judicial competence is determined by:

- the place of first publication of a defamatory statement;
 - the place in which the defamatory information was added to the website; or
 - the place in which an internet user first accessed and read the information.
- The court has now added the location of the server to this list.

The decision is consistent with previous case law, which provides that a judge may have recourse to presumptions in the absence of a specific law, and which takes into consideration the difficulty of identifying the place at which a first reader of a statement accessed the Internet. The Supreme Court has declared that in internet defamation cases, the place where the crime was committed is the place where the defamatory information was read by the largest number of readers, even if the website is registered abroad.

In such cases the recourse to presumption (and the attribution of jurisdiction to the court of the accused's place of residence) may be considered expeditious, but it is not the only available answer. In criminal law, such a presumption carries a risk of oversimplification. In theory, the defamatory information may not have been read by anyone, in which case a crime has merely been attempted. If the information has been read by a limited number of users, the place where the crime was committed (ie, the place where the defamatory information was read by a user) may be easily identified - such information can be accessed from the log of the server where the defamatory information was stored. This approach can also be used to identify the place where the defamatory statement was made. However, such information is sometimes difficult to obtain - only in such cases should a judge have recourse to the presumption under Article 9 of the code.

Endnotes

(1) Decision 964/2011.

(2) Article 30, Law 223/1990.

(3) Decision 25875, June 21 2006, or Decision 4741, November 17 2000.

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