



CAMMINO DIRITTO

Rivista di informazione giuridica



THE BIG BROTHER AND INDIVIDUAL FREEDOM

What is the scope of individual freedom in today's society?

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PUBBLICO - COSTITUZIONALE
Articolo divulgativo - ISSN 2421-7123

Publicato, Lunedì 25 Gennaio 2016

Big Brother is a reality show broadcasted on television. The protagonists are strangers who live in the same location and are observed 24/7 by video cameras. The competitors come from different geographical areas. They are not allowed to have contact with the external life: no television, cell phones, books, internet and even watches are permitted! In other words, **a proper restriction of individual freedom**.

The television program was inspired by **George Orwell's** novel "1984". The "Big Brother", through cameras, constantly checks on the State citizens who are under his leadership by these means, he limits their freedom. (1)

The television format seems to follow the slogan used in the novel: "Big Brother is watching you".

The Big Brother listens to the thoughts and secrets of all competitors in the confession room, a room where they have to go at least once a day.

Obviously, there are enormous differences between the novel and the TV game, but it is very interesting to think about an important legal issue: **the deprivation of individual freedom**.

The entrants must live in the house for the entire duration of the game, or until they have been nominated to abandon the house. It is clear, therefore, that they are under **a restriction on freedom of movement**. The point is that any law student has always conceived **personal freedom as an essential right**; that is, a right which no one can waive.

Even the right to life is considered essential. In fact, in criminal matters, although it has gone from an authoritarian-collectivist (which attributed to a single life a social value) to a personalistic inspirational conception based on the centrality of the human being in the Constitution, life continues to hold a character of absolute unavailability. Good examples are Articles 579 and 580 of the Penal Code, which criminalize respectively the murder of the consensual and the incitement to suicide. In Italy, despite the lively debate on the issue of euthanasia and the so-called "Mercy killing", the will to die is not legally recognised.

All this is a sign of the importance given by our system to **life**. (2)

As for the right to life, personal freedom is considered as an unavailable common-ground right. This principle is enshrined in **Article 13 of the Constitution**, which states:

"No form of detention, inspection or personal search nor any other restriction of personal freedom is admitted, except by a reasoned measure issued by a judicial authority, and only in the cases and the manner provided for by law. In exceptional cases of necessity and urgency, strictly defined by the law, law enforcement authorities may adopt temporary measures that must be communicated to the judicial authorities within forty-eight hours. Should such measures not be confirmed by the judicial authorities within the following forty-eight hours, they shall be revoked and deemed null and void. Any act of physical and moral violence against a person subjected to restrictions of personal liberty shall be punished. The law shall establish the maximum period of preventive detention."

This article assumes **"two guarantees for the tutelage of individual freedom: the legal reserve**, on which only the law or an act equivalent to it (Decree-Law and Legislative Decree) may determine the cases and the ways one can proceed to the restriction of freedom; and the **so-called jurisdiction reserve**, in which any restriction of individual freedom can only be established by the judicial authority." (3)

The stay in the Big Brother's house would seem to set up a real home detention, with the consent of the competitors, denying the guarantees of Art. 13 of the Constitution. Actually, in Art. 16 of the Constitution, that deals with freedom of movement and residence, is clear the lack of assurance of juridical reserve. In any case, it is not possible to give the consent to indulge a sweet death, but it is possible to agree on personal freedom.

This happens because the principles change over time; they evolve as society changes. Nowadays, a restriction in this sense is not inconceivable.

As claimed by the proponents of the sociology of law, it is society that determines the right and not the norms and principles of a higher grade. It is no longer possible to comply with an abstract dogmatism. Law is constantly changing because society and its culture are.

So, we should go over fixed categories and always take into account that the right cannot overlook the facts. Peoples' way of thinking changes continuously and the **idea of freedom** changes with them.