

The First Section of the European Court of Human Rights (ECHR), with a judgement of October 28th 2021, found a violation of art. 6 of the European Convention on Human Rights by Italy relating only to one of the three application that it examined jointly, given the similarity of their objects.

In applications nos. 55064/11, 37781/13 and 26049/14, the applicants alleged a violation of art. 6 § 1 of the Convention caused by an excessively formalistic application of the rules on drawing up cassation appeals: this would have deprived them of the right that every person has «to a fair and public hearing [...] by an independent and impartial tribunal [...]».

The European Court, after having recalled that the way in which art. 6 § 1 is applied to the proceedings before the courts of appeal or cassation depends on their particularities, specified that, in cases such as those in question, it must be verified whether the dismissal of a cassation appeal as inadmissible has not affected the very substance of the applicants' right to a fair trial before a tribunal. To this end, the European Court verified whether the conditions imposed for drawing up cassation appeals pursued a legitimate aim and were proportional.

Contested by the applicants, the aim pursued by the application of the principle of autonomy of the appeal to the Court of Cassation must – according to the Italian Government and according to what emerges from the jurisprudence of the Court of Cassation – facilitate the understanding of the case and the issues raised as well as allow the Court of Cassation to pronounce a judgement without having to resort to other documents, in order to preserve its role and function which consists in guaranteeing, in the last resort, the uniform application and correct interpretation of domestic law (nomofilachia).

In light of the above, the Strasbourg judges considered that this principle aims to simplify the activities of the Court of Cassation and, at the same time, to guarantee legal certainty and the correct administration of justice. Consequently, they focused only on examining the consequences that the restrictions on access to the appeal to the Supreme Court have entailed in the present case so as to be able to assess their proportionality.

The ECHR found that the principle of autonomy allows the Court of Cassation to determine the content of the complaints lodged with it and the scope of the assessment requested to it following the reading of the cassation appeal alone: this guarantees an appropriate and more efficient use of the available resources. This approach is due to the very nature of the appeal to the Court of Cassation which protects on the one hand the interest of the subject who lodge an appeal to the acceptance of his complaints regarding the impugned judgement and, on the other, the general interest in the possible annulment of a decision which would risk compromising the correct interpretation of the law. Therefore, the European Court has admitted, in principle, that the conditions for the admissibility of a cassation appeal may be more rigorous than those required for the appeals lodged with the Court of Appeal. The Italian Government also formulated considerations regarding the workload of the Court of Cassation due to the considerable number of appeals presented annually. However, the Strasbourg Court stressed that this workload, in the light of an excessively formalistic interpretation, cannot in itself limit the right of access to a tribunal (art. 6 of the Convention), damaging it in its very substance. In particular, the ECHR noted that from the case law provided by the applicants it emerges that the implementation by the Court of Cassation of the principle of autonomy reveals a tendency to highlight formal aspects that do not seem to satisfy the legitimate purpose mentioned above. Nevertheless, upon examination of each individual application, the European Court found a violation of art. 6 § 1 only in application no. 55064/11: in fact, in deeming the clarifications provided by the applicant insufficient, the Court of Cassation demonstrated an excessive and unjustifiable formalism with respect to the specific purpose of the principle of autonomy of cassation appeals and, therefore, of the aim pursued, namely the guarantee of legal certainty and the correct administration of justice.

Riferimenti Normativi:

- art. 6 Convenzione Europea dei Diritti dell'Uomo