

Italy, Supreme court of Cassation, civil section, united section, no. 32622/2018, supreme instance, 17/12/2018

Member State

 Italy

Topic

Rule of Law (Fair Trial/Access to Justice)

Deciding Court Original Language

Corte suprema di Cassazione, sezione civile, sezioni unite

Deciding Court English translation

Supreme court of Cassation

Registration N

32622/2018

Date Decision

17/12/2018

ECLI (if available)

ECLI:IT:CASS:2018:32622CIV

National Follow Up Of (when relevant)

No

EU legal sources and CJEU jurisprudence

- Article 2 TEU
- Article 4(3) TEU
- Article 260 TFUE
- Article 47 CFR

CJEU judgments in:

- *LM* (ECLI:EU:C:2018:586)
 - *Agrokonsulting-04* (ECLI:EU:C:2013:432)
 - *Link Logistik N&N* (ECLI:EU:C:2018:810)
 - *Unibet* (ECLI:EU:C:2007:163)
 - *Mono Car Styling* (ECLI:EU:C:2009:466)
 - *ClientEarth* (ECLI:EU:C:2013:805)
 - *Opinion 1/09* (ECLI:EU:C:2011:123)
 - *Inuit Tapiriit Kanatami* (EU:C:2013:625)
 - *Associação Sindical dos Juizes Portugueses* (EU:C:2018:117)
 - *INEOS* (ECLI:EU:C:2018:100)
 - *Fallimento Olimpiclub* (ECLI:EU:C:2009:50)
 - *Köbler* (ECLI:EU:C:2003:513)
 - *Kapferer* (ECLI:EU:C:2006:178)
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ECtHR Jurisprudence

- Article 6 ECHR
 - Article 13 ECHR
 - ECtHR judgment in *Wind Telecomunicazioni S.P.A. v. Italy* of 8 September 2015
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Subject Matter

Application before the Court of Cassation for denial of justice by the Consiglio di Stato. The Court

examines the compatibility of the national procedural rules on appeals with the right to an effective remedy entrenched in Article 47 CFR.

Legal issue(s)

Rule of Law (Fair Trial and Access to Justice)

In Italy, appeals against decisions of the Council of State can be brought before the Court of Cassation only for reasons of lack of jurisdiction. Thus, violations of EU law and failure to send a reference for preliminary ruling by a national court are not part of the reasons which can give rise to appeals before the Court of Cassation. The applicant doubted the compatibility of such system of appeal with EU law.

Request for expedited/PPU procedures

No

Interim Relief

No

National Law Sources

- Articles 110, 111 and 362 of the Italian Constitution
 - Article 362 Code of Civil Procedure (cod. proc. civ.)
 - Article 10 Code of Administrative Procedure (cod. proc. amm.)
 - Article 35 Legislative Decree 104/2010
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Facts of the case

The applicant had challenged before Regional Administrative Court (TAR) of Tuscany the resolution of the City Council of Florence restricting the installation of advertising banners on light poles. Since the TAR had only partially upheld his claims (judgment 1481/2015), the applicant appealed before Council of State, which, however, declared the appeal inadmissible (judgment 4794/2016). Thus, the applicant decided to appeal that judgment before the Court of Cassation since the Council of State rejected his claim for lack of interest, without examining it on substance.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

Before dealing with the substance of the case, the Court of Cassation assessed whether the Italian national procedural rules on appeals described in Articles 111 of the Italian Constitution, Article 362 cod. proc. civ. and Article 110 cod. proc. amm. are compatible with EU law and, in particular, the right to an effective remedy entrenched in Article 47 of the EU Charter. According to the national procedural law, violations of EU law and the failure to send a reference for preliminary ruling are not part of the reasons of jurisdiction which can give rise to appeals before the Court of Cassation against decisions of the Council of State. Indeed, in Italy the denial of jurisdiction, on the basis of which an appeal can be brought before the Court of Cassation, only occurs if the lower judge wrongly stated the lack of jurisdiction, and not if the denial of the protection requested depends on the interpretation of the rules invoked.

The Court of Cassation concluded that there is no contrast between the national rules on appeal and the EU Charter. In particular, it held that, since Article 47 CFR has a content similar to that of Articles 6 and 13 of the ECHR, by virtue of Article 52(3) CFR it must be interpreted in the same way as the jurisprudence of the ECtHR. In this respect, as the Strasbourg Court had already noted the compliance of the Italian appeal system with the principle of due process, that system had also to be compatible with Article 47 CFR. Moreover, the Court of Cassation founded the legitimacy of the system of appeal by relying on the principle of judicial autonomy as defined in the case-law of the CJEU. Finally, the national court stressed that limits to the system of appeals are functional to the principle of legal certainty, a cornerstone of the EU legal order that aims to guarantee both the stability of the law and legal relationships, and the good administration of justice.

Then, the Court of Cassation dealt with the substance of the case and declared the application inadmissible as there was no denial of justice.

Relation of the case to the EU Charter

The EU Charter was invoked as the relevant parameter for the right to an effective remedy. Indeed, the Court of Cassation evaluated the compatibility of the national system of appeal with EU law in light of Article 47 of the Charter. In doing so, the Court of Cassation elaborated on Articles 47 CFR and Articles 6 and 13 ECHR, as well as the relative case-law.

Relation between the EU Charter and ECHR

The Court of Cassation recognised that the right to effective judicial protection is a general principle of EU law deriving from the constitutional traditions common to the Member States, which has similar content to Articles 6 and 13 ECHR. It also explicitly quoted the CJEU judgment in *LM* and *Agrokonsulting-04*. Therefore, it acknowledged that, by virtue of Article 52(3) CFR, such a right must be interpreted in the same way as the case law of the ECtHR. In this respect, since the Court of Strasbourg has already noted in *Wind Telecomunicazioni spa v. Italy* that the Italian appeal system against judgments of the Council of State complies with the principles of fair trial, the Court of Cassation derived that such a system was also compatible with the EU Charter.

Use of Judicial Interaction technique(s)

The Court of Cassation interpreted the rules on the Italian system of appeal in light of Article 47 CFR and found it to be compliant with EU law.

The Court of Cassation found not necessary to send a request for a preliminary ruling because it held that the provisions of EU law at issue were already interpreted by the CJEU in such a way which excluded the incompatibility of the national law.

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

The Court of Cassation did not use other decisions of other courts to support its decision. Therefore, there was no horizontal judicial interaction. However, it is useful to mention the other judgement of the Supreme Court of Cassation, delivered on the same day, no. 32623/2018. Indeed, the subject matter and the applicant are the same, and the Court of Cassation reached the exact same conclusion.

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

The Court of Cassation engages with an assessment of judgments of the CJEU and the ECtHR (see above). No constitutional review involved.

Strategic use of judicial interaction technique (purpose aimed by the national court)

The Court of Cassation heavily relied on the case law of the CJEU to support the compatibility of national law with EU law. The purpose was to dispel any doubt and make clear and that the Italian system of appeal was in compliance of EU law. Indeed, an adverse conclusion would have had major consequences for the national legal order.

Impact on Legislation / Policy

No impact on national legislation/policy. However, if the judgment had had a different outcome and the Court of Cassation had found the Italian system of appeal not to be in compliance with EU law, that would have had a major impact on the national legal order.

Notes on the national implementation of the preliminary ruling by the referring court

Not applicable

Impact on national case law from the same Member State or other Member States

In order to make its point about the compatibility of national law with the Charter, the Court of Cassation relies not only to the case law of European courts but also on its own jurisprudence:

- Judgment of the Court of Cassation of 15/12/2010, n. 25320
 - judgment of the Court of Cassation of 29/04/2016, n. 8472
 - judgment of the Court of Cassation of 27/01/2017, n. 2046
 - judgment of the Court of Cassation of 04/02/2014, n. 2403
 - judgment of the Court of Cassation of 17/11/2015, n. 23460
 - judgment of the Court of Cassation of 27/12/2017, n. 30994
 - judgment of the Court of Cassation of 11/04/2018, n. 8984
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[Connected national caselaw / templates](#)

See the judgment of the Supreme Court of Cassation no. 32623/2018 of 17/12/2018.

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History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. Judgment of the Regional Administrative Court (TAR) of Tuscany of 06/11/2015 partially upholding the applicant's claims
 2. Judgment of the Council of State of 17/11/2016 declaring the appeal inadmissible
 3. Judgment of the Court of Cassation of 17/12/2018
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