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ACCESS TO THE SUPREME COURT – THE ITALIAN APPROACH

The topic of the session is “Access to the Supreme Court”.

Therefore, the task is to define, first, what is the Italian “Supreme Court” and, secondly, what are the rules to having access to it.

The answer to the first question requires the clarification of the “supreme court” concept.

As we know, there are many models of supreme courts, differing as regards their role, functions and procedures. Nonetheless, there is agreement as to the necessity – see in particular the case law of the European Court of Human Rights – to have a court that guarantees uniformity of case law and development of the rule of law.

Under the Italian Judiciary Act of 1941 (still in force), the *Corte di cassazione* – that sits in Rome and has jurisdiction over all the Italian territory – is the Supreme Court.

Based on the French model of *cassation* (adopted, through the Sardinian codes, by the first code of unified Italy of 1865), it is a court of last resort on points of law.

It has the function to “assure the exact observance and the uniform interpretation of the law, and the unity of the national law”.

In principle, there are no limits to the access to the *Corte di cassazione* (the money deposit originally fixed to access the Court was abolished by the Constitutional Court in 1977).

The grounds of appeal are limited (see article 360 of the CCP) and the proceedings have a formalistic approach (strict rules are imposed on the redaction of the introductory acts and severe sanctions are provided for the violation of formal rules, see articles 366, 370, 371 CCP).

Parties have to be represented by attorneys (attorneys have to be enrolled in a special list).

The docket of cases in the *Corte di cassazione* (the focus is on civil cases) is huge.

In 2013 29,024 cases were brought for review by the Court. In the same year the Court dealt with 30,167 cases. On 31 December 2013 about 100,000 cases were pending.

The numbers have constantly increased since the middle of the 20th century, almost tripling in the last 25 years (there were 13,000 applications in 1990).

The causes of the phenomenon – studied in depth and object of countless conferences and proposals – are usually traced to the following factors:

- the fundamental right to review by the *Corte di cassazione* provided for by the Constitution of 1948;

- the broad interpretation of this fundamental right by the *Corte di cassazione*;

- the tendency of the legislator and the case law to extend the appeal;

- the number of attorneys authorised to represent the parties in the *Corte di cassazione*: about 50,000 in 2013.

In the last years the Italian legislator repeatedly attempted to reduce the *Corte di cassazione* docket and to help the Court to exercise its role of *nomofilachia*.

Ultimately, by abandoning the idea of modifying article 111 of the Constitution, the legislator created – on the example of the French experience of the *formation restreinte* – a new section of the Court (the sixth section) which examines all applications and decides in “*camera di consiglio*” which of them are inadmissible, and expanded the list of cases of inadmissibility of the application to the Court.

Nonetheless, the numbers (and the proceedings delay) of the *Corte di cassazione* are substantially unchanged.

The question is: can the Italian *Corte di cassazione* – employing hundreds of judges and dealing with tens of thousand of cases concerning questions of no public interest whatsoever – be considered a “supreme” court?

A provocative conclusion could be that the Italian Supreme Court is not – as we read in the Judiciary Act – the *Corte di cassazione*, but the Constitutional Court, which, somehow in competition with the *Corte di cassazione*, controls both the constitutional legitimacy of the law and interpretation given to the law by the courts.

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Summary

The text focuses on the problem of limiting access to the Italian *Corte di cassazione*. According to the author, the access to cassation court is considered a constitutional right

in Italy and should not be subject to restrictions. This point of view is supported by the jurisprudence of the Italian Constitutional Court, which abolished the obligation to file a money deposit in 1977. As a consequence, the access to the *Corte di cassazione* turns out to be limitless. This state of affairs results in a significant backlog of the Court, which deals with circa 30,000 cases on an annual basis. The requirement of obligatory legal representation does not decrease the number of cassations, given a vast number of specialised attorneys who are authorised to act before *Corte di cassazione*. In order to deal with the increasing number of cassations, a new chamber of the Court was created in order to assess the admissibility of cassation. Nonetheless, it did not significantly affect the influx of cases, nor did it improve duration of the proceedings.

KEYWORDS

access to the Supreme Court, delay of proceedings, right to cassation

SŁOWA KLUCZOWE

dostęp do Sądu Najwyższego, przewlekłość postępowania, prawo do kasacji